114-663

Vol. 1.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~7 8 8~~ 482

CALVIN AMORY STEVENS

Appellant.

vs.

THE MOBILE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED NOVEMBER 16, 1881.

SUPREME COURT OF THE UNITED STATES.

No. 783.

CALVIN AMORY STEVENS, EUGENE KELLY AND JOHN T. TERRY ON BEHALF OF THE HOLDERS OF INTERNAL IMPROVEMENT BONDS OF TENNESSEE, ISSUED TO THE MOBILE AND OHIO RAILROAD COMPANY,

vs.

THE MOBILE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SIXTH JUDICIAL CIRCUIT, AND EASTERN DISTRICT OF TENNESSEE.

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United States Circuit Court.

Sixth Judicial Circuit, Western District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Mobile and Ohio Railroad Company,

versus

The Mobile and Ohio Railroad Company.

BILL FOR RELIEF.

E. L. ANDREWS and
GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

United States Circuit Court,

Sixth Judicial Circuit, Western District of Tennessee.

IN EQUITY.

To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Western District of Tennessee.

Your orator, Calvin Amory Stevens, who is a citizen of the State of New York, brings this, his bill of complaint, against the Mobile and Ohio Railroad Company, which is a citizen of the State of Tennessee, and is a corporation organized, existing, and transacting business in said State by virtue of, and under, an act of the General Assembly of said State; and against (by leave) William B. Duncan and Andrew F. Elliott, as receivers of the said railroad, appointed by this honorable Court.

And thereupon your orator, complaining, shows unto your Honors that he brings this bill of complaint, as well on behalf of all other holders of the Internal Improvement bonds loaned by the State of Tennessee to the Mobile and Ohio Railroad Company, who may come in and contribute to the expenses of this litigation, as on his own behalf as a holder of said bonds.

Your orator shows that the Mobile and Ohio Railroad Company is a body, politic and corporate, chartered by an act of the General Assembly of the State of Tennessee, passed on February 28, 1848. The object and purpose of the creation of said corporation, by the said

several charters, was the construction, completion, and, thereafter, the operation and management of a line of railway for the transportation of passengers and freight from the city of Mobile, in the State of Alabama, through the territory of the State of Tennessee, to a point in the State of Kentucky, on the Ohio river.

For this purpose powers were granted to said corporation, as are declared in the several charters and acts of incorporation. The said corporation was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for, and insure the payment of, its liabilities.

Your orator shows that the said railroad in the State of Tennessee, is now in the hands of the receivers aforesaid, acting under the orders of this Court, in a suit upon a deed of trust and mortgage executed by the Mobile and Ohio Railroad Company.

Your orator makes part of this, his bill of complaint, the said several charters and acts, with their several amendments, passed by the legislature of Tennessee, and attaches copies thereof, marked Exhibit A.

Your orator shows that the General Assembly of the State of Tennessee, by an act, passed the 11th of February, in the year 1852, determined to lend to the railroad companies within its limits, and specified in said act, the aid of its credit, for the completion of their several lines of railway.

The plan of that legislation was that each railroad company should procure a certain amount of *bona fide* subscriptions for its capital stock, and that it should have graded, bridged, and ready for the reception of rails, a certain number of miles of its road. By means of these preliminary requirements, assurance was obtained that each railroad company would be competent to fulfill the obligations it was to incur under the statute hereinafter set forth. The period of four years was allowed for the completion of each section of a road. The act proceeds to authorize

and give validity to bonds of the State, which the governor was required to issue to each company. The amounts of the bonds were to be ascertained by the length of each railroad within the State, and the proceeds of the bonds were to be exclusively applied to the payment of the railroad iron, and equipments of the road to which they were loaned. The president of each railroad company, assisted by a commissioner appointed by the governor, was to negotiate the sale of the bonds loaned to his company. The act was made a public law for all purposes of notice, and a system of numbering was adopted for distinguishing each bond, and identifying the company to which it was issued. The tenor of the act which gave existence to the bonds, was, that each company become liable upon, and bound to perform, the obligations contained in, and represented by, the bonds loaned to it. Each company was to pay, from its own means, the interest upon the bonds loaned to it, as the same matured from time to time, and also to pay and discharge the principal debt, as it was expressed upon said bonds, when the same matured.

Your orator shows that the sale of the said bonds was to be the means of raising the money requisite for completing the superstructure, laying the rails, and providing the equipment of the roads. The bonds loaned to each company were to be payable in such places in the United States as its president might designate. In order to insure the said sale, and make a market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become the purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it, or, in case of its failure, that ample security should be provided therefor, which might be easily realized, it was provided by the statute, that " so soon as the bonds of the State shall have been issued for the first section of the road, they shall constitute a lien upon said section, without a deed from the company," and the " State of Ten-

nessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage, without a deed from the company for the payment by said company of said bonds, with the interest thereon, as the same becomes due, and with a like mortgage or lien, without a deed from the company, upon the additional sections, and upon the entire road, including the stock, for the payment of all of the bonds issued to the company, and for the interest accruing thereon." This statutory lien was to be operative at once, and without conveyance or assurance of any kind from the corporations, and was to be superior to all other liens, upon the entire road and property of any corporation so receiving such public assistance, in the State of Tennessee. The statute was to be a substitute for a mortgage executed by each railroad company, for the purposes named in the act.

By the terms of an act of the same session provision was made for a public and official record of the issues of bonds to the several roads.

The Comptroller of the State was required to sign and number the coupons of the bonds issued to each railroad, and the Secretary of State was required to number and countersign the bonds; and upon delivering bonds to the several companies, the Secretary of State was required to take a receipt, reciting the number, date, and amount of the bonds so delivered. These receipts were to be taken in a well-bound book, to be deposited in the office of the Secretary of State.

The General Improvement law, above referred to, is herewith set out fully and at length, to wit:

AN ACT to Establish a System of Internal Improvements in this State.

SECTION I. *Be it enacted by the General Assembly of the State of Tennessee*, That whenever the East Tennessee and Virginia Railroad Company shall

have procured *bona fide* subscriptions for the capital stock in said company to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and whenever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus, in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that section, or any part thereof, is not subject to any lien whatever, other than those created in favor of the State by the acts of 1851–2, by the written affidavit of the Chief Engineers and President of said company, together with the written affidavit of a competent engineer by him appointed, at the cost of the company, to examine said section, then said Governor shall issue *to said company* coupon bonds of the State of Tennessee, to an amount not exceeding eight thousand dollars per mile on said section, and on no other condition, *which bonds shall be payable at such place in the United States as the President of the Company may designate*, bearing an interest of six per centum per annum, payable semi-annually, and not having more than forty nor less than thirty years to mature.

SEC. 2. *Be it enacted*, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same unless upon the affidavit of said President, and a resolution of a majority of the Board of Directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails, and the Governor shall have power to appoint a commissioner to act under oath, in conjunction with said President, in negotiating said bonds for the purposes aforesaid, and to

act in any other matters pertaining to said company, where the interest of the State, in the opinion of the Governor, may require it.

SEC. 3. *Be it enacted, That so soon as the* BONDS *of the State shall have been issued for the first section of the road as aforesaid,* THEY *shall constitute a lien upon said section so prepared as aforesaid,* including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same shall be *invested* with *said* lien or mortgage without a deed from the company, *for the payment by said company of said bonds,* with the interest thereon as the same becomes due.

SEC. 4. *Be it enacted,* That when said company shall have prepared as aforesaid a second section, or any additional number of sections, of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of the facts as before provided, he shall, in like manner, issue to said company like bonds of the State of Tennessee, to an equal amount with that before issued under the first section of the act for each and every section, of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions hereinbefore provided, and upon the issuance of the said bonds, the State of Tennessee shall be *invested* with *a like mortgage or lien* without a deed from said company, upon said stock, and upon *said first and additional section or sections* of said road so prepared, upon the rails and equipments put, or to be put, upon the same, *for the payment of said bonds and the accruing interest thereon.* Provided, that if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified, shall be less than thirty miles in extent, bonds of the State shall be issued for such section, or such railroad, as may be less than thirty miles in extent for an amount in proportion to the distance, as provided in this act, but upon the same terms and conditions in all respects, as required in

regard to the bonds to be issued for the other sections of said road. And when the whole of said road shall be completed the State of Tennessee shall be *invested with a lien, without a deed from the company*, upon the entire road, including the stock, right of way, grading, bridging, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business; and all depots, and depot stations, *for the payment of all of said bonds issued to the company* as provided in this act, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for the said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over, or come in conflict with, the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, which shall have priority over all other claims existing or to exist against said company.

SEC. 5. *Be it enacted, That it shall be the duty of said company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange or necessary commissions*, OR SATISFACTORY EVIDENCE THAT SAID INTEREST HAS BEEN PAID OR PROVIDED FOR, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that effect to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee, in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits, and dividends, *and pay over the same, under the direction of the Governor, toward the liquida-*

tion of such unpaid interest. And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the person so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of the counties through which the road shall run, commanding them to take possession of said road, fixtures, and equipments, and everything pertaining thereto, and place the said receiver in full and complete possession of the same, and said receiver so appointed shall continue in the possession of said road, fixtures, and equipments, and run the same, and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to said proceedings, *to pay off and discharge the interest as aforesaid, due on said bonds,* which being done, the receiver shall surrender said road and fixtures and equipments to said company. The comptroller shall from time to time settle the accounts with the receiver, and the balance shall be deposited in the treasury of the State. The comptroller is authorized, and it is made his duty, upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds, *as may not be provided for by the company, as provided for in this act,* and the comptroller shall report thereof to the general assembly from time to time.

SEC. 6. *Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due,* it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company of the fact; and thereupon, said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, *to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee, against any loss on account of the issuance of said bonds,* by ordering the said railroad to be placed in the hands of a receiver; ordering the sale of said road, and all the property and assets attached thereto

or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 7. *Be it enacted*, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, *and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company; and bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be directed as aforesaid*, AND CANCELED. And should said company fail to comply with the provisions of this section, it shall be proceeded against, *as provided in the 5th section of this act.*

SEC. 8. *Be it enacted*, That the President of the company shall make semi-annual reports, under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and the company, and after its completion he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings, and dividends, and what per cent. is paid on the stock to the stockholders. And said reports shall be consolidated every two years by the President of said company, and said consolidated reports shall be laid before the Governor by the first of September, every two years after the completion of the road, and the Governor shall lay said report before the Legislature for its action, at the next meeting thereof, after said report is made.

SEC. 9. *Be it enacted*, That it shall not be lawful for any officer of said company to engage in any speculation or dealing, directly or indirectly, in any real estate on or along the line, at any of the de-

pots or depot stations, or at either terminus of said road, until after the road is completed, and every officer of the company, before entering upon the duties of his office, shall take an oath in writing, before any judge or justice of the peace in this State, that he will not knowingly violate the provisions of this act, and that he will faithfully perform the duties of his office; and if any such officer of the company, or other person taking an oath as herein provided, knowingly swear falsely, he shall be deemed guilty of perjury, and subject to all the pains and penalties thereof, and every affidavit required under this act may be sworn to before any judge or justice of the peace in this State.

SEC. 10. *Be it enacted*, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown, and Charlestown Railroad Company, the Nashville and Northwestern Railroad Company, the Louisville and Nashville Railroad Company, the Southwestern Railroad, the McMinnville and Manchester Railroad Company, the Memphis and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville, and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this act.

SEC. 11. *Be it enacted*, That the gauge of all of said railroads (unless connecting with roads in other States of a different gauge) shall be the same as that of the Nashville and Chattanooga Railroad, and not otherwise, and the iron rails to be put upon said road shall not be less than eighty tons to the mile, if the U rail is used, and not less than one hundred tons to the mile if the T rail is used.

SEC. 12. *Be it enacted, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed neces-*

sary to protect the interest of the State, and to secure the State against any loss IN CONSEQUENCE OF THE ISSUANCE OF BONDS UNDER THE PROVISIONS OF THIS ACT. BUT IN SUCH MANNER AS NOT TO IMPAIR THE VESTED RIGHTS OF THE STOCKHOLDERS OF THE COMPANIES.

SEC. 13. *Be it enacted*, That it shall be the duty of the Governor, from time to time, when there shall be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of bonds of this State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute, in the name of the State, a suit in the Circuit or Chancery Court of the county of the place of business of the company, setting forth the facts; and when the fact shall satisfactorily appear to the Court, that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning, and provisions of this act, then, and in such case, the Court shall order, adjudge, and decree, that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the treasury, *and it shall be the duty of the comptroller immediately to vest the same in stocks, creating a sinking fund, as provided for in the 7th section of this act;* and said company shall forfeit all rights and privileges under the provisions of this act, and the stockholders thereof shall be individually liable *for the payment of the bonds so fraudulently obtained* by such company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by such company, excepting such stockholders as may show to the said Court that they were ignorant of or opposed to the perpetration of such frauds by the company.

SEC. 14. *Be it enacted*, That in the event any of the roads, fixtures, or property belonging to any of said roads shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property, in the name of the State; and in case said

agent shall purchase said road for the State, *the Governor shall appoint a receiver, who shall take possession of said road and property, and use the same as provided for in the 5th section of this act*, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

SEC. 15. *Be it enacted, That this act shall be deemed and taken to be a public act as to all purposes of notice: Provided*, That should any of the companies hereinbefore enumerated have, *bona fide*, and before the passage of this act, purchased or otherwise contracted for, upon their own credit, the necessary iron, rails, spikes, equipments, for the road or roads, or any section or sections thereof, the bonds of the State shall be issued to such company or companies, as hereinbefore prescribed.

SEC. 16. *Be it enacted*, That the railroad companies specified in this act, and all other railroad companies hereafter incorporated in this State, shall have power to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other, or with the branches thereof; and it shall be the duty of said companies, when required, to receive on their roads and branches, the full loaded freight cars from each other and the branches thereof, and transport the same to their destination, and return them, without charging for the transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars. *Provided*, that said companies shall not be compelled to receive such cars on their roads, unless they are constructed with the same gauge, and are of equal strength with their own cars, of which the principal engineer of the road of which it is proposed to require said cars to be transported shall be the judge. *Provided*, that the bonds of the State, proposed to be issued to the Memphis and Charleston Railroad Company under the provisions of this act, shall, in event of their issuance to said company, be divided between the main trunk line, proposed to be constructed by said company, and the branch thereof, from the town of Moscow to the town of Sommerville, in the county of Fayette, according to the respective lengths of

said main trunk line and said branch; and the lien of the State, as herein secured, shall continue upon said main line, and also upon said branch, until said bonds and interest are paid, as heretofore provided.

SEC. 17. *Be it enacted*, That in all cases where bonds may be issued to any of said companies, as provided in this act, the State of Tennessee shall be entitled to two directors in each company, to be appointed by the Governor of the State, to which bonds may be issued.

SEC. 18. *Be it enacted*, That when the Nashville and Chattanooga Railroad Company shall have completed twenty-five miles of their road, in addition to the eighty miles specified in the second section of the act, passed the 4th of February, 1848, chapter 169, then the Governor of the State shall indorse and guarantee, in the name and on behalf of the State of Tennessee, the bonds of said company to the amount of one hundred and seventy-five thousand dollars, and in like manner, when another section of twenty-five miles of said road shall have been completed, the Governor of the State, in the name and on behalf of the State, shall indorse and guarantee the bonds of said company to the additional amount of one hundred and seventy-five thousand dollars, and said bonds are to be indorsed and guaranteed in the same manner, and the same indemnity is to be furnished by said company for the protection of the State, and the like lien is to be given, and the same character of bonds are to be indorsed and guaranteed, as provided in the said act of the 4th of February, 1848.

SEC. 19. *Be it enacted*, That the aid contemplated by the first section of this act, shall only be extended to one of the roads chartered under the names of the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company. *Provided*, That the first of said roads which shall secure the subscription of the capital stock, for the construction of the same, shall be entitled to such aid. *Provided further*, If the Nashville and Southern Railroad Company first obtained the stock in their railroad, as provided in the first section of this act, and shall construct their road to the Tennessee river, to the Mississippi State line, or to a point between the

Tennessee river and the Mississippi State line, then the Tennessee and Alabama Railroad Company may construct their road from the Alabama State line to intersect with the Nashville and Southern Railroad, at such point as said company may select, and the provisions of this act shall extend to the Tennessee and Alabama Railroad, from said Alabama State line to said point of intersection. But if the Tennessee and Alabama Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and construct their road to the Alabama line, in the direction of Florence, then the Nashville and Southern Railroad Company may construct their railroad from the Tennessee river, the Mississippi State line, or any point between the Tennessee river and the Mississippi State line, so as to intersect the Tennessee and Alabama Railroad, at such point as the company may select, and the provisions of this act shall extend to said railroad from said point of intersection to the Tennessee river, the Mississippi State line, or to any point between the Tennessee river, and the Mississippi State line. And the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company, shall have power to unite or consolidate their stock if they deem it advisable, and upon such terms as the companies may agree upon. *Provided also*, that if the Memphis and Nashville Railroad Company shall not comply with the requirements of this act, and complete thirty miles of their road within four years; or if the Nashville and Northwestern Railroad Company shall, in like manner, fail to complete thirty miles of their road within four years, then the Tennessee Central Railroad Company shall have all the rights, powers, privileges, and benefits intended to be given by this act, to those companies respectively, under the same restrictions and limitations; but the said Tennessee Central Railroad Company shall be allowed two years longer time, in which to prepare thirty miles of their road-bed for the reception of the iron rails, and may then receive the aid of the State, in the issuance of bonds for their benefit, as prescribed in this act. *Provided*, That this provision shall not preclude any subsequent legislature from extending the time of four

years, in which to complete any section of thirty miles of said Nashville and Memphis, or Nashville and Northwestern Railroad. *That each of said companies is hereby authorized and required to appoint an agent or agents to whom the bonds shall be delivered, and whose duty it shall be to control said bonds, and see that they are exclusively applied to the payment of the railroad iron and equipments, as provided for in this act, and for no other purpose whatever.* And the said agent, before he receives the bonds of the State, shall give bond and security, to be approved by the Governor and payable to the State of Tennessee, for the application of the bonds, or the proceeds thereof, to the purposes aforesaid. *Provided*, That before any bonds, under the provisions of this act, shall be issued to any agent of any railroad contemplated by this act, the president of any such company shall first deposit in the office of the Secretary of State, a full, true, and accurate list of all the stockholders, with the sums subscribed by each and every stockholder.

SEC. 20. *Be it enacted*, That no road embraced in this act shall be entitled to State aid unless it shall, *within four years*, complete at least one section of thirty miles, or the whole length of the road, if less than thirty miles long.

Those portions of the act of February 21st, 1852, providing for identification of the bonds, by means of public records, are as follows :

SEC. 7. *Be it further enacted*, That the different Internal Improvement Companies, to whom the bonds of the State may be loaned under the different acts of the present Legislature, shall pay the expenses of engraving and preparing the same.

SEC. 8. *Be it enacted*, That the Governor of the State shall cause to be engraved and printed, the bonds which may be issued under the acts of the present General Assembly, as a loan made to Internal Improvement Companies, and the said bonds shall bear date on the first day of January prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. *Be it enacted, That the coupons shall be signed and numbered by the comptroller, and the bonds shall be countersigned, sealed, and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date, and amount of said bonds,* in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party receiving the said bond.

Your orator shows that the State of Tennessee, by act of its General Assembly, passed on the 8th of February, 1854, increased the amount of bonds to be issued to the several "internal improvement companies from $8,000 to $10,000 per mile," and provision was made for an issue of similar bonds to be used for bridge purposes. The said act was amendatory of the act passed 11th of February, 1852, "to establish a system of internal improvement in this State," and required that the increased amount of bonds should be received, "upon the terms and conditions mentioned in the act, which this was intended to amend." By the act of February 17, 1854, the length of the sections which it was necessary for the railroads to complete before obtaining bonds of the State, was decreased from twenty to ten miles, after the completion of the first section of thirty miles. By the act of January 19, 1855, the foregoing act was amended so that the grading only of ten-mile sections was required, in lieu of the completion of said sections. The act of October 29, 1855, was amendatory of the bridge law, above mentioned.

Your orator attaches hereto copies of said acts above referred to, marked Exhibit B, and makes them a part of his bill of complaint.

Your orator shows that there was delivered on account of the Mobile and Ohio Railroad and to the company of that name, internal improvement bonds of the State of Tennessee, being of the numbers, dates, and in the amounts hereinafter set forth :

3,886 to 4,185, White, B, 300	$300,000
4,186 to 4,221, White, B, 36	36,000
4,948 to 5,047, White, B, 100	100,000
5,523 to 5,792, White, B, 270	270,000
5,903 to 5,970, White, B, 68	68,000
10,111 to 10,210, White, B, 100	100,000
11,545 to 11,664, White, B, 100	100,000
367 to 516, White, C, 150	150,000
1,707 to 1,878, White, C, 172	172,000
	$1,296,000

A copy of one of the said bonds and coupons is hereto attached, marked Exhibit C.

Your orator shows that the said bonds, to the amount of $1,296,000, were received by or on behalf of the Mobile and Ohio Railroad Company, through the officers appointed in the act of February 11, 1852, and were, by the said company, negotiated and sold, in pursuance of law, to *bona fide* holders. The proceeds of these bonds were to be applied to enable the company to which they were loaned, to earn the interest and principal moneys of the said obligations. About one thousand and seventy-nine of the said bonds are now outstanding in the hands of *bona fide* holders. Your orator is the owner and holder of thirty of said bonds, each for $1,000, being of the numbers, dates, and descriptions in all respects of the bonds heretofore described and issued to the Mobile and Ohio Railroad Company by the State of Tennessee.

Your orator is likewise the holder of seven coupons, attached to each one of said bonds, the same representing the installments of interest for three and one-half consecutive years, beginning with the installment that fell due on the 1st of January, 1876, and including the installment of the first day of January, 1879, and amounting in the aggregate to twenty-one per cent. of the par or principal amount of each one of the aforesaid bonds. Your orator shows that the holders of said bonds are very numerous, and reside in foreign countries, as well as in different parts of the United

States. Their names are in great part unknown to your orator, and they are therefore not made parties hereto.

And further complaining, your orator shows that the Mobile and Ohio Railroad Company has failed to comply with the provisions of the general internal improvement law above recited, for the payment of the said installments of interest on your orator's bonds, and on the bonds of other holders in like situation, and the coupons of the bonds aforesaid are now in default and unpaid.

Your orator charges like defaults upon the coupons that have fallen due and have become payable by the Mobile and Ohio Railroad Company, according to the terms of the statute, on the first day of January, 1876; on the first day of July, 1876; on the first day of January, 1877; on the first day of July, 1877; on the first day of January, 1878; on the first day of July, 1878, and on the first day of January, 1879. The State of Tennessee is likewise in default on said coupons.

Your orator is entitled to the enforcement of the lien aforesaid, for the payment of interest on his bonds, and those of other holders, and for the appointment of receivers, under the powers of this Court of equity, for the purposes described in the statute.

Your orator further shows that it is provided by the statute that upon default in the payment of interest by any of the Internal Improvement Companies, upon the bonds loaned it, the right to impound the rents, issues, profits, and dividends shall accrue, for the purpose of paying over the same toward the liquidation of the unpaid interest. For the execution of that purpose, it provides that some suitable person or persons shall be appointed as receivers to take possession and control of said railroad, and all the assets thereof. Said receiver is to continue in possession and manage the entire road until a sufficient sum shall be realized, exclusive of the costs and expenses incident to such proceedings, to pay off and discharge the interest due on the bonds.

And now your orator shows that the said railroad

company pretends and claims that the aforesaid lien on its property is satisfied and discharged, without payment of the interest or principal of your orator's bonds, and that it is also absolved from the obligation which it assumed by the acceptance and use of the said bonds to pay the interest thereon.

It claims that the discharge of said incumbrance has been effected by and through the means of certain legislation, enacted in the years 1869 and 1870, many years after the sale of the said bonds, and while the same were outstanding, in the hands of *bona fide* purchasers thereof.

The said company pretends that by the act of February 21, 1856, increasing the sinking fund to two per cent. per annum, to commence from the date of the issuance of internal improvement bonds, and providing for reinvestment of the accruing interest in the sinking fund, it was intended that deliveries of bonds into the sinking fund should constitute a discharge of the statutory lien on the road, without payment of interest or principal of the bonds loaned to the company. It claims a similar effect to be deduced from the act passed on 20th March, 1860. Copies of the said acts are herewith attached, marked Exhibit D.

The said company likewise pretends that, by means of the acts of February 25, 1869, and of January 2, 1870, it was enabled to extinguish the obligation to pay the interest and principal of the internal improvement bonds issued to it, by means of the delivery to the State of any obligations of the State, though the said obligations were not secured by a statutory lien upon the Mobile and Ohio Railroad, or issued in aid thereof. The defendant claims to have complied with the provisions of said acts, and to have thereby discharged the said incumbrance, without payment of the bonds for which it was responsible.

Your orator shows that the said pretense is fraudulent, and he charges the facts to be as follows:

During the late civil war the railroad companies did not pay the interest on the bonds issued to them, and after the war they still continued in great part in default in mak-

ing the payments of interest on the said bonds. The State of Tennessee had likewise been in default during the same time. The market value of the bonds had meanwhile fallen very greatly, and the securities were very much depreciated, to about fifty per cent. or less of their par value.

Under these circumstances, the officials of the railroad companies conceived the project of avoiding the liabilities of these corporations for the payment of the bonds loaned to them. Their project was to treat the lien on the railroads as the absolute property of the State, without regard to the trust in favor of the holders of the bonds whose moneys the companies had received. They purposed to induce the legislature to proceed upon this basis, and to assign the lien on each road, in consideration of the receipt by the State of an amount of its bonds from each company, without regard to whether they were the bonds loaned to and the obligations of the company delivering them, and were entitled to the lien on its road. They applied themselves to the procurement of such acts of the General Assembly of Tennessee as they deemed would assist them in the accomplishment of their projects.

Your orator shows that the General Assembly did pass an act on February 25, 1869, a copy of which is hereto attached, marked Exhibit E. Your orator shows that the said act, as passed, differed in material respects from the bill drafted by the agents of the corporations. It had been amended in the course of its passage through the assembly, so as to preserve the rights of the Internal Improvement bondholders to their liens on the several railroads.

Your orator shows that the railroad companies, not being content with the said act, and not deeming that they had thereby acquired even the appearance of legislative support for the project on which they desired to enter, procured, at the next session of the legislature, the introduction of a bill, which, as amended, became the act of January 2, 1870, a copy of which is hereto attached, marked Exhibit F.

Your orator further shows that the said last mentioned act, as passed, differed in material respects from the bill which the officials of the railroad corporations had procured to be introduced, as appears by the insertion of the provisions hereinafter referred to.

Your orator shows that about said time the officers of some of the railroad corporations obtained the opinion of counsel that they might safely embark on the venture above described, and disregard the rights and liens of the holders of the internal improvement bonds. Your orator prays leave to bring proof of said opinions on the trial, and particularly of the opinion of Edward H. East and others. Your orator shows that at the time the officials of some of the railroad companies offered the new or so-called substitution bonds for sale (which bonds they claimed had acquired the lien of your orator's bonds), they published an opinion of New York counsel seeking to show that the State had the right to treat the liens of the internal improvement bonds in the manner above described. The said transaction in all its entirety was fully understood by the railroad company, and by the purchasers of the new bonds, as appeared from the face of their bonds, the deed purporting to secure them, and the legal opinions above mentioned. They knew that they were engaged in an attempt to grasp the security and property conferred by the distinct language of the statute upon the holders of the internal improvement bonds, for the payment of the interest and principal of their bonds.

Your orator further avers and shows that the said pretenses and claims are illegal and invalid and fraudulent. The defendants never had, nor have they, any right to affect or impair the contract and lien which was created and entered into by and between the holders of the internal improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as trustee of the said lien or mortgage, and the railroad company as the debtor under the said contract and lien.

Your orator charges that none of the aforesaid acts of the General Assembly purport to authorize the discharge of the

lien of the internal improvement bonds, issued to the railroad company, in any other mode than by the delivery of the identical bonds constituting liens upon the said railroad. The act of February 25, 1869, provides that the interest of the present bondholders of the State shall not be affected, and that railroad companies which have issued second-mortgage bonds, availing themselves of the provisions of that act, shall file with the comptroller, bonds of the same series as those loaned to such company, for which the State holds a first-mortgage lien. The act of January 2, 1870, requires that its provisions shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund.

Your orator charges that, under and by virtue of the provisions of the general internal improvement law of February 11, 1852, the State of Tennessee was only secondarily liable for the bonds loaned by it to the Mobile and Ohio Railroad Company, and that the said company was primarily liable under the provisions of said act, for the payment of the principal and interest of said bonds. And your orator charges that the said acts were not applicable by their terms to the lien secured to the bonds issued in aid of the Mobile and Ohio Railroad Company.

Your orator further charges that by the terms of the general improvement law of February 11, 1852, the State of Tennessee constituted herself the trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act. The terms of that trust were defined and set forth in the sections of the statute.

By the acceptance of the bonds, and the use of their proceeds by the Mobile and Ohio Railroad Company, a mortgage lien attached to the property of the company, without a deed from the company, and the conditions of that mortgage were as prescribed in the statute. By the purchase of the said bonds, the holders thereof became entitled, by contract, to the lien rights set forth in the internal

improvement law. That lien was distinctly specified to be for the payment of the principal and interest of the bonds loaned to the company, as the same accrued and became due.

Your orator charges that the aforesaid acts, of date subsequent to the issuance of said bonds, in so far as they attempt, or may be construed to have authorized the satisfaction of the statutory lien established for the benefit of the holders of the internal improvement bonds of Tennessee loaned to the said company, by any other means than payment, impaired or sought to impair the obligation of the contract aforesaid, and were in violation of the Federal Constitution, and void, and all acts committed thereunder are illegal and null.

Your orator likewise shows that, by virtue of his right in equity as a lienholder and the terms of the statutory mortgage above described, he is entitled to have the possession of the Mobile and Ohio Railroad, in the State of Tennessee, secured by a receivership, for the benefit of the holders of the internal improvement bonds aforesaid, loaned to the Mobile and Ohio Railroad Company, and for the payment of the interest thereon, for which the said company became bound. The receiver or receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orator shows that the officials of the State of Tennessee, named in the internal improvement law for the execution of the trusts pertaining to the statutory receivership, to wit, the comptroller and the governor, claim to be bound by the subsequent acts of the General Assembly of Tennessee, passed in the years 1869 and 1870, and your orator is unable to obtain the action of the said officials, or of the State of Tennessee, as trustee for the execution of the trusts aforesaid. Your orator shows that he is remediless at law and without the intervention of a court of equity.

Wherefore, your orator prays that the priority of the said lien of the internal improvement bonds and coupons afore-

said, upon all the railroad equipment, incomes, tolls, rights, privileges, property, and franchises of said Mobile and Ohio Railroad Company, within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights. That the income of said property, arising from its use in said State, may be applied to the payment of interest accrued and to accrue upon the bonds hereinbefore described, and as may appear by proofs before a master to be still outstanding and unpaid. That the said property may be seized by order of this Court and placed in the hands of receivers, to be administered according to the liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied.

And, may it please your Honors, to grant unto your orator such further or other and different relief in the premises, as the nature of the case may require, and be consistent with equity and good conscience.

May it please your Honors, to grant unto your orator writs of subpena of the United States of America, to be directed to the said Mobile and Ohio Railroad Company, and to the said William B. Duncan and Andrew F. Elliott, as receivers, and against all other persons interested in this matter and amenable to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honors, in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such orders and decrees therein as to your Honors shall seem meet.

E. L. ANDREWS and GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

APPENDIX.

Exhibit B.

ACT OF FEBRUARY 8, 1854.

AN ACT to amend an act passed 11th February, 1852, entitled "An Act to establish a system of Internal Improvement in this State."

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the bonds of the State shall issue to the companies mentioned in the first and tenth, and nineteenth sections of the act which this is intended to amend, and also to the "Edgefield and Kentucky Railroad Company," "Central Southern Railroad Company," "Knoxville and Charleston Railroad Company," Mississippi Central and Tennessee Railroad Company," "Knoxville and Kentucky Railroad Company," "Tennessee Western and Charleston Railroad Company," and "Cincinnati, Cumberland Gap and Charleston Railroad Company," *upon the terms and conditions mentioned in the act which this is intendet to amend*, but to the extent of ten thousand dollars (instead of eight thousand) per mile. *Provided*, that the aid of the State shall be extended to the South Carolina, Tennessee and Kentucky Railroad Company, in lieu of the Knoxville and Charleston Railroad Company, to the extent of fifty-five miles, and no more, in the event the Blue Ridge Railroad Company of South Carolina shall adopt the charter of said South Carolina, Tennessee and Kentucky Railroad Company, and obligate themselves in such manner as shall be satisfactory to the Governor, not to stop the construction of the said road at a junction with the East Tennessee and Georgia Railroad, but to build said road to South West Point; and said South Carolina, Tennessee and Kentucky Railroad Company, before it shall receive the aid herein provided, shall bring itself within the general provisions in all respects, of the act which this is intended to amend. But should the Blue Ridge Railroad Company not adopt such charter, and enter into the obligations aforesaid, then the provisions of this act and that which it is intended to amend, shall apply in all things to the Knoxville and Charleston Railroad Company.

SEC. 2. *Be it further enacted*, That bonds of the State shall issue to the companies mentioned in the first section of this act, and the tenth and nineteenth sections of that which this is intended to amend, for each bridge that said companies, or either of them, may have to build in East, Middle, and West Tennessee, across the Holston, Clinch, Big Hatchie, Tennessee, and Cumberland rivers, for the maximum sum that bonds are provided to be issued to said East Tennessee and Georgia Railroad Company, by an Act passed February 4, 1852, entitled, "An Act to aid in the completion of the East Tennessee and Georgia

Railroad," and upon the terms and conditions mentioned in said Act (except the 2nd section), and also in the fifth and sixth sections of an Act, passed February 26, 1852, entitled "An Act to charter the Chattanooga, Blue Spring, and Cleveland Railroad Company, and for other purposes," and said bonds to be issued under this section shall be included in the aggregate amount of stock raised by said companies in the same manner that the three hundred thousand dollars of bonds loaned to the East Tennessee and Virginia Railroad Company, under an Act, passed January 15, 1852, to enable said company to build bridges, are provided to be included in the aggregate amount of stock to be raised by the East Tennessee and Virginia Railroad Company.

SEC. 3. *Be it further enacted*, That the office of "Commissioner of Roads" be filled by the appointment of the Governor; that the incumbent shall hold his office for two years, and shall receive an annual salary of two thousand dollars. It shall be his duty to examine into the condition of railroad companies applying for the bonds of the State, and to report on oath to the Governor, the condition of said roads and the companies owning them; inquiring into and reporting all the facts necessary to be reported upon under this Act, and that which this is intended to amend. He shall further superintend and supervise the interest of the State in all the railroads and turnpike roads of this State, and whenever he may deem it necessary, report to the Governor any facts he may believe to be of importance to said interest. The said commissioner, in making his investigations, shall have the power to administer oaths, and send for persons and papers; and may, if in the opinion of the Governor it should be necessary and proper, apply to the Courts for aid to protect said interests; and it shall not be lawful for the Governor to issue such bonds to any railroad company until he shall be satisfied they have complied with the law.

SEC. 4. *Be it enacted*, That if any officer, agent, or servant of any railroad company receiving the bonds of the State, shall appropriate said bonds or the money arising from the sale thereof, or any portion of either, to any other use than that prescribed in the Act under which said bonds shall be issued, such person or persons so offending shall be deemed guilty of a felony, and, upon conviction, shall undergo confinement in the penitentiary for a period of not less than five nor more than fifteen years.

SEC. 5. *Be it enacted*, That no road embraced in this Act shall be entitled to its provisions, unless it shall, within four years, grade one section of thirty miles.

SEC. 6. *Be it enacted*, That the Governor shall indorse and guarantee the bonds of the Nashville and Chattanooga Railroad Company to an amount not exceeding six hundred and fifty thousand dollars, and the State shall thereupon, by virtue of this Act, be invested with a lien

upon the entire road of said company, with all its equipments, fixtures, etc., and shall have the same remedies for enforcing said lien as are given by previous Acts of the General Assembly directing an indorsement of the bonds of said company. The provisions of this Act shall extend to all railroad companies mentioned in the aforesaid Act, passed February 11, 1852, whose charters, routes, or names have been, or may hereafter be, changed; and if any two or more of said companies shall be consolidated, they, or the consolidated company, shall still be entitled to the provisions of this Act.

SEC. 7. *Be it further enacted*, That the Mississippi Central and Tennessee Railroad Company shall be entitled to the provisions of this Act from Jackson, Tennessee, to the Tennessee river, for any extension of said road which said company may make from Jackson by way of Huntingdon in the direction of Nashville. And, *provided further*, that nothing in this Act shall be so construed as to extend the time for the completion of the first section of the roads mentioned in the said Act of 11th February, 1852.

SEC. 8. *Be it enacted*, That the bonds to be issued under the provisions of this Act shall, *in no case be sold at less than par*.

SEC. 9. *Be it further enacted*, That the first section of an Act, passed February 11, 1852, entitled "An Act to establish a system of internal improvements in this State," be so amended that whenever the East Tennessee and Virginia Railroad Company shall have graded and shall have ready to put down the necessary timbers for the reception of rails, as is contemplated in said section, from Knoxville to the Holston river at Magbie's ferry, or to the Holston river at Middletown, at each end, it shall be the duty of the Governor to issue bonds of the State to the company, as is required in said section, and when said company shall have complied with the above requisitions, it shall be considered as fulfilling the requirements in full of the first section of the Act above referred to.

SEC. 10. *Be it enacted*, That the provisions of this Act shall extend to and embrace the Mississippi and Tennessee Railroad Company, chartered 5th December, 1853, and the State aid given to other roads by this Act shall be given in like manner to the said Mississippi and Tennessee Railroad, so far as the same lies in the State of Tennessee.

SEC. 11. *Be it enacted*, That the farther time of two years is hereby extended to the Southwestern Railroad Company to bring themselves within the provisions of the Act entitled "An act to establish a system of internal improvements in this State."

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF FEBRUARY 17, 1854.

AN ACT to amend the charter of the Memphis and Somerville Turnpike Company, and for other purposes.

. . . . . .

SEC. 5. *Be it enacted*, That the fourth section of an Act to establish a system of internal improvements in this State be amended by striking out the word *twenty* wherever it occurs in said section, and inserting the word *ten*, so as to allow all the railroad companies entitled to the benefits of said act, and an Act, passed February 8, 1854, as an amendment thereto, to obtain the bonds of the State upon sections of *ten* miles instead of *twenty* miles, after the first section of thirty miles has been completed.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF JANUARY 19, 1855.

AN ACT to amend the Internal Improvement Acts of 1852 and 1854.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That hereafter it shall not be necessary for the Engineer-in-Chief to swear to the subscription list, solvency, and condition of any railroad company applying for State aid, but the oath required of the Engineer shall be taken by the President and Treasurer of the company, whose duty it is to know of the condition, solvency, and financial affairs of said company.

SEC. 2. *Be it further enacted*, That it shall be lawful and proper for the East Tennessee and Virginia Railroad Company to lay down iron at either end of said road, and to draw the bonds of the State according to the General Internal Improvement Act, passed February 11, 1851–2, and the Act of February, 8, 1853–4.

SEC. 3. *Be it enacted*, That the fifth section of the Act of February 17, 1854, be so amended that hereafter the bonds of the State may issue for ten miles or more of road graded, as required by existing laws, after the completion of the first thirty miles.

SEC. 4. *Be it further enacted*, That so much of the General Internal Improvement Acts of 1851–2, and 1853 and 1854, as requires the several railroad companies embraced within the provisions of the aforesaid Acts to have the bridges, abutments, and embankments on the several sections of their respective roads completed before the bonds of the State shall issue to the companies of said roads, be so amended as to accept those bridges, abutments, and embankments which have been provided with State aid.

SEC. 5. *Be it enacted*, That this Act shall take effect from and after its passage.

NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Exhibit C.

$1,000. $1,000.

No. UNITED STATES OF AMERICA. No.

Know all men by these presents: That the State of Tennessee acknowledges to owe to , or order, One Thousand Dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the day of , 18 , with interest thereon, at the rate of six per cent. per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payments of said sums of money, and the interest thereon, at the times and places, and in the manner aforesaid, the faith of the said State of Tennessee is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the General Assembly of said State, passed February 11th, 1852, to establish a system of Internal Improvements in said State.

In testimony whereof, and in pursuance of the acts aforesaid, I, , Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the great seal of the State affixed.

[ ] Done at the Executive Department in the city of Nashville, this day of , 18 .

To which was attached the following form of coupon:

30. THE TREASURER OF THE STATE OF TENNESSEE. **30.**

Will pay the bearer THIRTY DOLLARS, in the city of New York, on the first day of January, 1877, being the semi-annual interest then falling due on bond No.

J. C. SUTTRELL, 30.
Comptroller.

Exhibit D.

ACT OF FEBRUARY 21, 1856.

AN ACT to aid in constructing a railroad from Chattanooga to the East Tennessee and Georgia Railroad, in the direction of Knoxville, and for the benefit of the East Tennessee and Virginia Railroad, and for other purposes.

. . . . . .

SEC. 5. *Be it further enacted*, That it shall be the duty of the several railroad companies in this State, who have received, or may hereafter receive, bonds of the State, or the indorsement of their bonds by the State to aid in the construction of their several roads, under the provisions of the act of 1851, 1852, and the acts amendatory thereto, at the expiration of five years from the issuance or indorsement of their several bonds, annually to set apart and pay over to the Treasurer of the State two per cent. per annum upon all bonds which have been or may hereafter be issued or indorsed as aforesaid as a sinking fund for the ultimate redemption of the bonds issued or indorsed as aforesaid; which sinking fund, when paid over, the Governor, Comptroller of the Treasury, and President of the Bank of Tennessee shall invest in the bonds of the State, and reinvest all accruing interest in like securities; and they are hereby constituted a board of commissioners for the management, government, and control of said sinking fund.

SEC. 6. *Be it further enacted*, That should any of said railroad companies fail, or refuse to comply with the provisions of the fifth section of this act, it shall be the duty of the Governor forthwith to notify the Attorney-General of the district in which is situated the place of business of said company failing or refusing as aforesaid, of the fact; and thereupon the Attorney-General shall immediately proceed against said company to collect said sinking fund, in the manner prescribed in the sixth section of the act entitled "An Act to establish a system of internal improvements in this State," passed February 11, 1852.

NEIL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHEM,
Speaker of the Senate.

ACT OF MARCH 20, 1860.

AN ACT to provide for the equalization and investment of the sinking fund, on the bonds issued to or indorsed for railroads in this State.

SECTION 1. *Be it enacted by the General Assembly of Tennessee*, That the money or bonds, that have heretofore or may be paid by the cities or railroad companies in this State to the Sinking Fund Commission-

ers by the 1st of January, 1860, together with the accruing interest thereon to that date, shall be passed directly to the credit of the party having so paid the same, and be a release to said party for that amount on the debt due by them to the State of Tennessee.

SEC. 2. Said bonds shall all be canceled by said commissioners, and if indorsed bonds of any railroad company shall be canceled as hereinafter provided for the cancellation of State bonds, and shall be delivered over to said company or corporation, taking the president's of said company or the officers' of said company receipt for the same, which receipt shall be filed and a copy of the same placed upon a book, which the said commissioners shall keep for that purpose. If State bonds, they shall be canceled and filed in the office of the Secretary of State as hereinafter provided.

SEC. 3. That after the first day of January, 1860, all railroad companies or city corporations who have or may hereafter receive the bonds of the State, or its indorsement of their own bonds under the general internal improvement law of this State, or any other law, shall be required to pay two and one-half per cent. per annum as a sinking fund on the amount of the bonds so issued or indorsed by the State for said company or corporation, to be paid in equal installments on the first days of April and October, five years after the date of said bonds, and annually thereafter.

SEC. 4. All bonds issued during any one year shall be dated on the first day of January of that year.

SEC. 5. Said companies or corporations may pay said sinking fund in cash or in the like character of bonds that may have been issued or indorsed by the State for said company at their face or par value.

SEC. 6. If paid in money, the commissioners shall invest it immediately in the bonds of the State, and shall have the same canceled and filed as heretofore provided. Such bonds are to be of the same character as those issued to such company or corporation.

SEC. 7. The sinking fund, when paid, in all cases shall be passed directly to the credit of said company or corporation, and be a release to said company or corporation from that amount due by them to the State. The commissioners shall issue a receipt to each company or corporation for such payment, retaining a duplicate in a well-bound book kept for that purpose.

SEC. 8. Each and every railroad company or city corporation shall provide the interest semi-annually, as now provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued to or indorsed by the State for said company as heretofore provided.

SEC. 9. The Comptroller of the State shall keep a regular account against each company or corporation, charging them with the amount of bonds originally issued to or indorsed for said company or corpora-

tion by the State, and crediting them by the amount of the sinking fund paid, and shall furnish the Treasurer of State a statement of the amount due by each company or corporation on the first day of June and December of each year, that he may know how much interest each company or corporation has to pay.

SEC. 10. The commissioners of the sinking fund shall cancel all bonds of the State as soon as paid in or purchased, by cutting out the Governor's and Secretary of State's names, and so defacing each coupon that it can not by possibility be used or circulated, and shall file the same in the Secretary of State's office.

SEC. 11. This law shall be in full force from and after its passage, and shall repeal all laws in conflict with it, but shall not be so construed as otherwise to affect any law on the subject of the sinking fund or the payment of interest due on State or indorsed bonds.

W. C. WHITTHORNE,
Speaker of the House of Representatives.
TAZ. W. NEWMAN,
Speaker of the Senate.

Exhibit E.

ACT OF FEBRUARY 25, 1869.

AN ACT to Liquidate the State Debt, contracted in aid of Railroad Companies in the State of Tennessee.

WHEREAS, under the General Internal Improvement Laws of the State, passed from time to time, aid has been granted to various railroad companies by the loaning of six per cent. bonds of the State, to enable said companies to iron, equip, build, and bridge, and for other purposes, which is now secured to the State by a first mortgage or lien on the franchise, property, and fixtures of respective railroad companies; and,

WHEREAS, it is desirable for the general welfare of the State, that the State shall be reimbursed such amounts as have been advanced to the different railroad companies, as fast as may be practicable; therefore,

SECTION 1. *Be it enacted by the general assembly of the State of Tennessee*, That the respective railroad companies, or either of them that have created indebtedness to the State, are hereby authorized to repay any amount of the principal of such indebtedness as they have respectively created in the bonds of the State, in such amount, and at such times, as may be practicable:

Provided, however, that nothing in this Act shall be so construed as to release said railroad companies from any lien which the State may have on the same for any unpaid interest now due on said bonds of the State authorized to be surrendered by this Act.

SEC. 2. *Be it further enacted*, That any railroad company or companies repaying any indebtedness due the State under the provisions of this act, are authorized to issue bonds of equal amount and denomination with the bonds of the State paid and delivered up for cancellation, as hereinafter provided, which said railroad bonds, so issued in lieu of any amount of State bonds, shall be certified to by the comptroller, entered in a book to be kept for that purpose, with date, number, and amount, and shall be a lien, pro rata in amount and of equal validity and effect with the unretired part of the State indebtedness upon such railroad, and all its property, franchises, fixtures, and material.

SEC. 3. *Be it further enacted*, That in order to facilitate the railroad companies that may wish to avail themselves of the provisions of this act in paying the indebtedness due to the State, respectively, they, or any of them, are hereby authorized to consolidate their property, in whole or in part, with other railroad companies, and issue bonds and stock as provided for in the second section of this act, and may adopt the corporate franchise of either of the roads as the stockholders may elect, and each railroad company paying its indebtedness, and such railroad companies as may consolidate under the provisions of this act, are hereby authorized to determine, by a vote of the stockholders of said company or consolidated companies, the number of directors of such company, and elect the same under the new organization, and that the said directors, so elected, shall, according to the by-laws and rules of said corporation, elect one of their number president of said company.

SEC. 4. *Be it further enacted*, That the comptroller of the State shall receive from the railroad companies, or any of them, bonds of the State in such amounts as may be presented, and cancel the same in the presence of the officer or agent of the railroad company paying them in, and execute to the said railroad company or companies duplicate receipts for the amount and number of said bonds so paid in, and it shall further be the duty of the comptroller to certify on the bonds of any railroad company or companies repaying indebtedness due to the State, that the same has been paid, and that the so certified (bonds) are secured by first mortgage.

Provided, That said railroad companies shall liquidate their indebtedness prior to the maturity of the bonds that have caused said indebtedness; and be it further provided, that said bonds, when executed by the respective railroad companies or either of them, shall be deposited with the Comptroller of the State, whose duty it shall be to deliver said bonds, or any number of them, to the president and directors of the company, on the deposit by said president and directors or authorized agent of an equal amount of the six per cent. bonds of the State of Tennessee, with unpaid coupons attached, and the

company's first mortgage bonds, authorized to be issued by this act, shall have no validity or value except the comptroller's certificate is affixed on the face of each bond, that said bond is executed, and issued and by virtue of law taken the place of a bond of the State and is the first mortgage bond.

SEC. 5. *Be it further enacted*, That the comptroller shall be entitled to a fee of one dollar on each thousand dollars of the bonds certified as aforesaid, to be paid by the railroad company for which the same is done; and it shall be lawful for the comptroller to discharge the duties imposed by this act, by and through an agent in the city of New York; and all the provisions of this act shall attach to and become a part of the charter of any railroad company or companies acting under it.

SEC. 6. *Be it further enacted*, That by and with the consent of the board of directors of any railroad company in this State under the General Improvement Law, passed the 11th of February, 1852, and all the amendments thereto, that any person or corporation may, by paying the indebtedness of such railroad company to the State in the bonds of the State, as provided for by law, be, and they are hereby substituted and entitled to all the liens against said company for the payment of said debt that the State had or has by law, and the Governor and Secretary of State shall give such party or parties paying such indebtedness a certificate showing the facts, which shall be evidence against said company of such indebtedness to said individuals or corporations.

SEC. 7. *Be it further enacted*, That any person or persons may, with the consent and approbation of any railroad company which is indebted to, and for which the State of Tennessee holds a lien, pay the said debt, *so far as the State is concerned*, in the bonds of the State, or any coupons of bonds at par, and the person or persons so paying the debt of any railroad company with the consent of such railroad company, shall, upon filing with the treasurer of this State the written assent of said railroad company, under the corporate seal of said railroad company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being to place the person or persons so paying with the consent of said railroad company in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

SEC. 8. *Be it further enacted*, That any person or persons who may with the consent and approbation of any railroad company, pay any part or portion of the indebtedness of such company, as provided in Sec. —, shall have, hold, and be subrogated in all the rights, privileges,

and lien or liens of the State, to the extent of, and in proportion to, the amount of such indebtedness, with the same rights and privileges the State now has, to the extent of such payment or payments: *Provided, the passage of this act shall not decrease the lien of the State upon any railroad of the State until the entire claim of the State is fully liquidated,* OR AFFECT THE INTEREST OF THE PRESENT BONDHOLDERS OF THE STATE; *Provided, that railroad companies which have issued second mortgage bonds, availing themselves of the provisions of this act, shall file with the comptroller bonds of the same series as those loaned to such company, for which the State holds a first mortgage lien. Provided, the bonds to be issued by the company, under the provisions of this act, shall not have a longer time to run than the bonds of the State thus released and canceled.*

SEC. 9. *Be it further enacted,* That this act shall take effect from and after its passage.

Exhibit F.

ACT OF JANUARY 2, 1870.

AN ACT for the Payment of the State Debt.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee,* That an Act entitled "An Act to liquidate the State debt, contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, be, and the same is hereby amended, so as to allow any railroad company which may be indebted to the State by reason of the bonds of the State loaned to said railroad company, to pay into the State, in liquidation of the principal of said indebtedness, any of the legally-issued six per cent. bonds of the State of Tennessee outstanding, without regard to series or number; and such payment shall, to the extent made, be a full and perfect discharge of the lien which the State holds upon the property of such railroad company, held by virtue of the bonds of the State issued to such railroad company, whether they be the same bonds or the same series of bonds issued to said company under the act passed February 11, 1852, and acts amendatory thereof, or not.

SEC. 2. *Be it further enacted,* That railroad companies issuing their own mortgage bonds under the provisions of the act which this is intended to amend, be allowed to fix the rate of interest which the said bonds of the railroad company are to bear, and all laws in conflict are hereby repealed. *Provided,* that when said railroad companies owe interest already due, coupons past due shall be taken by the comptroller or treasurer in discharge of such indebtedness for interest.

SEC. 3. *Be it further enacted,* That when any company, under the provisions of this act, shall pay into the treasury of the State bonds which have been issued by the State to said company, the said bonds

shall be canceled; but should any company, in discharge of its own debts, pay into the treasury any bonds that were issued to other companies that may still be indebted to the State, such bonds so paid in shall not be canceled, but shall be held by the State as purchased bonds, retaining a lien for the State upon the road to which said bonds were originally issued until the debt of said road to the State shall be fully discharged, when the bonds so held shall be canceled. *Provided*, that the provisions of this act shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund, now required by law, of the railroad companies of this State.

SEC. 4. *Be it further enacted*, That this act shall take effect from and after its passage.

United States Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on his own behalf and on behalf of the other holders of Internal Improvement Bonds of Tennessee issued to the Mobile and Ohio Railroad Company,

vs.

THE MOBILE AND OHIO RAILROAD COMPANY, WILLIAM BUTLER DUNCAN and ANDREW F. ELLIOTT, Receivers, &c.

The Separate Answer of the Mobile & Ohio Railroad Company to the Bill of Complaint of Calvin Amory Stevens, heretofore filed in this cause in his own behalf and in behalf of Holders of Internal Improvement Bonds of Tennessee, issued to it.

Respondent, now and at all times, saving all benefit of exceptions that may be taken to the many errors and insufficiencies in said bill of complaint, for answer

5 thereto, or to so much as it is advised it is material for it to answer—answering, says:

It admits it is a body politic and corporate, and that it was chartered in due form of law by an act of the Legislature passed on the 28th day of February, A. D. 1848; that it was also duly chartered and incorporated by acts of the Legislatures of the States of Alabama, Mississippi and Kentucky; that the object and purpose of such incorporation was to enable it to construct,
6 equip and operate a railroad from the City of Mobile, in said State of Alabama, to some point in the State of Kentucky near the mouth of the Ohio River; that in accordance with said charter and in fulfilment of said purpose and object of incorporation, it did thereafter construct, equip and operate such railroad from said City of Mobile to Columbus, in said State of Kentucky.

Respondent admits that it had power to borrow
7 money, and for that purpose to issue bonds and execute mortgages. This power was not conferred in the original act of incorporation aforesaid, but was expressly given by the act of the Legislature of Tennessee, of date October 31st, 1855. Therein it was provided, that the power thus conferred should not be construed in any manner to *affect the rights or lien of the State on said road under the several laws in force granting State aid to said company, or give any person or persons any right or preferences over the State.* Respondent supposes Exhibit A to com-
8 plainant's bill to substantially set forth said charter, together with various amendments subsequently made; but should the same not prove, upon further comparison, to be exact and accurate, asks leave to produce properly authenticated copies of the same, together with all other amendments and additions thereto, so far as the same may be material.

Respondent admits that William Butler Duncan and 9
Andrew F. Elliott were appointed by this Honorable
Court its receivers to take charge of, manage and oper-
ate, under its orders and directions, the road of respon-
dent, and that they did take charge of and operate the
same as directed, until the said Elliott departed this
life; since which period said Duncan has acted as the
sole receiver and manager of said road in Tennessee,
under the orders aforesaid, and the same is now in his
custody and possession.

10

Respondent says that said Duncan and Elliot were,
prior to this, appointed receivers of said road by the
Circuit Court of the United States for the Fifth Judicial
Circuit, sitting at Mobile, Alabama, to operate the
same as aforesaid, under the orders and supervision of
that Court, throughout its entire length. Respondent
further shows that its headquarters and principal busi-
ness offices were, and had always been, in said city.
That the subsequent appointment of said Duncan and
Elliott receivers by this Court was supplemented and 11
ancillary to said appointment by the Circuit Court for
the Fifth Judicial Circuit, and was so expressed to be
upon the face of said order of appointment; that it was
thought at that time to be uncertain whether said Dun-
can and Elliott had authority to operate that part of
said road situate in Tennessee under an appointment
emanating from said Federal Court in Alabama, and
hence, out of abundance of caution, the order aforesaid
was asked for and obtained from this court. But re-
spondent is now informed that said first mentioned 12
appointment was and is in all respects sufficient; that
said Circuit Corut for Alabama had full jurisdiction in its
discretion to appoint receivers to manage the whole line
of said road; that the rights and duties of the latter
were co-extensive therewith, and not limited to that
part thereof situated within the territorial jurisdiction of
said Court. It is therefore submitted, whether this cause

13 should be further proceeded with without the permission of said Court first had and obtained, and whether the bill filed herein should not be dismissed.

Respondent, further answering, admits that the General Assembly of the State of Tennessee passed an act on the 11th of February, 1852, entitled "An act to establish a system of internal improvements in the State," but it does not concede, and on the contrary denies, that complainant has set forth the same cor-
14 rectly in his bill, and reserves the right to present a true and perfect copy thereof at the hearing of this cause. Respondent also denies the construction placed by complainant upon said act, and each and every allegation contained in his said bill as to the purpose and object of the same, except in so far as the same is admitted in this answer.

Respondent is advised, and so charges, that this was
15 not the first act passed with relation to internal improvements. The subject had engaged public attention in the State for many years prior to this time, and had taken practical form in that provision of her Constitution of the year 1834, which declares that "A well regulated system of internal improvements is calculated to develop the resources of the State, and promote the happiness and prosperity of her citizens, therefore it ought to be encouraged by the General Assembly." Pursuing the line of policy here laid
16 down, successive Legislatures, by a series of acts, partial in their application and varying in their terms, extended the aid of the State to many corporate bodies having for their object the construction and improvement of turnpikes, railroads, and other avenues of travel. The scheme adopted by this legislation, as a rule, was for the State to subscribe for a given portion of the capital stock of such enterprises, and in payment of the same, issue her bonds, making provision

for the payment of the interest accruing thereon out of 17
the tolls and revenues of said companies.

This legislation was crude and experimental in its character, and as experience proved, unsatisfactory in its results. After a full and fair trial of this system, and when its unsuitableness to the end in view was fully demonstrated, it was abandoned. Thereupon the Legislature fell upon the plan of endorsing the bonds of the various internal improvement companies, which it was deemed politic to aid. This was done in 18
several instances, but was also found unsatisfactory in its practical workings. Notwithstanding these abortive, and in some instances disastrous, efforts, the general policy of supplementing individual effort with State aid was still regarded as a measure of sound political economy, was time and again recommended by the various Governors of the State in their messages to the Legislature, and finally became the fixed definite policy of the State, which culminated in the said act of February 11, 1852. Respondent will produce 19
at the hearing of this cause properly certified copies of said acts, messages, and other public documents, in so far as they may be material or necessary.

Respondent concedes that the said act of February 11, 1852, had for its object the establishing a system of internal improvement in the State, as is explicitly set forth in the preamble and clearly indicated in the body of said act. It concedes that the plan proposed was, substantially, that when any of the various railroad 20
companies therein mentioned as being entitled to the benefits of said act, should procure *bona fide* subscriptions for the capital stock to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it was shown by said company to the Governor of the State that said sub-

21 scriptions were good and solvent, and whenever said company had graded, bridged, and had ready to put down the necessary timbers for the reception of the rails, and fully prepared thirty miles of said road at either terminus, and the Governor was notified of these facts, and that said section and any part thereof was not subject to any lien whatever other than those created by the act of 1851-52 in favor of the State of Tennessee, by the written affidavits of chief engineers and president of said company, etc., then said Governor
22 should issue to said company coupon bonds of the State of Tennessee to an amount not exceeding eight thousand dollars per mile, bearing interest at the rate of six per cent. per annum, and having not less than thirty nor more than forty years to run; that whenever a second section of twenty miles should be completed connecting with first, the Governor, upon notification, should issue to said company like bonds of the State of Tennessee to the amount of eight thousand dollars per mile; and should the last section be
23 less than twenty miles, then at the same rate as above stated.

Respondent admits that by the terms of said act the Governor of the State had the power conferred to appoint a commissioner to act in conjunction with the president of the company in negotiating the said bonds; and also, that said act was made a public law for all purposes of notice.

24 Respondent also concedes that the act of the 8th of February, 1854, increased the amount of bonds to be issued to the several internal improvement companies aforesaid from $8,000 to $10,000 per mile; that provision was also made for an issue of similar bonds for bridge purposes; and that, by the act of February 17, 1854, the lengths of the sections which it was necessary for the railroad companies to complete before obtaining

the bonds was decreased from twenty to ten miles, after 25
completion of the first section of thirty miles.

Respondent also admits that it was expressly embraced within said acts, and that it received from the State of Tennessee her six per cent. coupon bearing bonds, at the times and in the amounts following, viz:

June 17, 1856	$300,000
June 17, 1856	36,000
December 12, 1856	100,000
August 28, 1857	270,000
November 16, 1857	68,000
October 6, 1859	100,000
July 10, 1860	100,000
September 10, 1860	150,000
June 11, 1861	172,000
Total	$1,296,000

26

Respondent further concedes that said bonds were, after their reception on the dates aforesaid, negotiated 27
and sold. Respondent does not know whether or not Exhibit C to complainant's bill is a true copy of said bonds and coupons, nor whether said bonds are all facsimiles of each other, but insists that the best and only evidence of all this will be the bonds themselves; nor does it admit that complainant is, as he asserts, the owner of thirty or any number of said bonds, nor of said coupons, or any of them, nor that the same, nor any other of said bonds, are numbered as set forth in said bill, but demands proof of the same. 28

Respondent expressly denies that said act provided for any system of numbering or otherwise marking and designating said bonds, so that those issued to one of said railroad companies could be identified and distinguished from those issued to any other of said companies. The Legislature, by an act passed February 21, 1852, among

other things, did make provision for the signing and numbering of the coupons by the Comptroller, and for the countersigning, sealing, and numbering of the bonds so issued by the Secretary of State, and that upon delivering said bonds to the company authorized to receive the same, the Secretary of State should take a receipt reciting the number, date, and amount of said bonds in a well bound book, to be deposited in his office. The evident and only intent and object of this act was to provide the State of Tennessee with an authentic and ready means of ascertaining to what coupon each particular bond was issued. This was desirable and necessary on many accounts, but especially for the reason that the 7th section of the act of February 11, 1852, provided that each of the railroads receiving aid under said act should, at the expiration of five years after their completion, set apart one per centum per annum upon the amount of bonds issued to the company and should use the same in the purchase of bonds of the State of Tennessee, and should pay the same into the treasury of the State of Tennessee, etc., and that bonds so paid in, and the interest accruing thereon, should be held and used as a sinking fund for the *pagment of the bonds* issued to the company, and should said company re-purchase any of the bonds issued to it under the provisions of said act, that it should be a credit as aforesaid, and cancelled.

It is obvious that unless the *State* had some record by means of which the bonds issued to each company could be precisely identified, it would be impossible for her officials to know what bonds and coupons, when paid in under the provisions of said section, should be kept alive and held and used as a sinking fund, and what cancelled. The said act of February 11, 1852, did not require such record to be kept, and the omission was remedied by the act of February 21, 1852.

Respondent avers that it was never intended as a 33
record or registry for the benefit of the bondholders. They were not supposed by the Legislature to have any interest in that matter. Had any such idea prevailed, or been thought of by the authors of the act of February 11, 1852, they would have in said act provided some method by which the holder of each bond could know to what road his bond had been issued. And especially had it been intended to create and constitute the lien now set up by complainant and his co-bondholders, the act so creating and constituting the same 34
would assuredly have required each bond issued under its provisions to set forth upon its face to what company it was issued, and to show upon what property it was an incumbrance. No Legislature would have been guilty of the gross ignorance and folly of offering for sale—certainly no capitalist would have thought of purchasing—a bond showing it was secured by a lien or mortgage, and yet failing to designate what property the mortgage or lien embraced.

35

The truth is, as respondent charges, that no holder of any Tennessee bond under the act of February 11, 1852, supposed, at the time of buying the same, that he had a lien or mortgage upon any railroad or other property, but relied solely upon the security offered upon the face of his bond, viz: the faith and credit of the State of Tennessee.

Respondent charges that no holder of any of said bonds, as a matter of fact, knew or cared to what road 36
his bond was issued—that no inquiry was ever made by any of said holders for many years after said bonds were issued to ascertain this fact, and this, although the State had repeatedly defaulted in the payment of interest on said bonds.

Respondent, further answering, admits that the issu-

37 ance of said bonds to the railroad companies, mentioned in said act, was to assist them in the construction and equipment ot their roads, by negotiating the bonds and using the proceeds thereof for that purpose, and that these bonds were to be made payable at such places in the United States as the respective presidents of said companies might designate. This latter provision was to enable said companies to designate the places of payment at one or more of the great stock and money centers of the United
38 States, and to add to the attractiveness of the investment in the eyes of capitalists by the ease and convenience with which they could collect the interest upon the same. But respondent denies "that in order to insure a sale and market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become the purchaser of the same, that each company would punctually pay the pricipal and interest of the bonds loaned to it; or, in case of its failure,
39 that ample security might be provided therefor, which might be easily realized, it was provided by statute that so soon as the bonds of the State shall have been issued for the first section of the road, they shall constitute a lien upon said section, without a deed from the company, and with a like lien or mortgage upon the additional sections, and upon the entire road, including the stock, for the payment of all the bonds issued to the company, and for the interest accruing thereon." It is true that a lien was secured on said
40 sections as the bonds were issued, and upon the completion of the entire road said lien or mortgage attached thereto, but respondent avers that said security was for a very different purpose from that indicated by complainant. It was never thought necessary by the Legislature to add anything in the nature of lien or mortgage to support and maintain the credit of the State of Tennessee, or render salable securities for the pay-

ment of which she pledged her resources and honor. 41
Her people at that time were free from debt, prosperous, proud of their State, and zealous of her good name, the State debt, by comparison with her taxable values, was almost nominal. Both at home and abroad existed the most implicit confidence as to her ability to pay and scrupulous integrity. Under these circumstances it was not remarkable, and the fact was that her bonds and other obligations were eagerly sought for, and commanded a premium in the markets of this country and of Europe. There were issued by the State 42
bonds for other purposes, such as the Capitol bonds, Hermitage bonds, Bank of Tennessee bonds, where there was no pretense whatever of a lien or other security beyond the individual pledge of the State, and yet these were just as valuable, and were always quoted at as high a figure as those issued to the railroads, and which it is alleged constitute a lien upon the same.

Again, several of the companies who received aid under the Internal Improvement Act aforesaid, by reason 43
of mismanagement or from other causes, were of but little value, whilst others under prudent and judicious administrations were worth much more than the amount of Tennessee bonds issued to them. Nevertheless in every instance the bonds so issued commanded the same price—no more and no less. Respondent concedes that the lien or mortgage reserved in said act of February 11, 1852, was created and existed by virtue of the statute—and became and was operative without conveyance or assurance of any kind 44
from the corporations receiving the State aid aforesaid under its provisions—and that it was superior to all other liens upon said railroads.

Respondent avers that the only object and purpose of said act in retaining the statutory lien and mortgage aforesaid, was to protect the *State and the State alone*

from loss—by reason of the failure of any said corporations to provide the State in the manner prescribed in said act with a sum sufficient to pay the interest on said bonds—and to pay the principal on said bonds when they fell due. To that end the Legislature adopted a suitable phraseology. They declare that the bonds upon their issuance shall constitute a lien upon said section so prepared as aforesaid, including the road-bed, right of way, grading, bridges and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes and equipments, when purchased and delivered, and the *State of Tennessee*, upon the issue of said bonds, and by virtue of the same, shall be invested with said lien or mortgage, without a deed from the company, for the payment by said company, with the interest thereon as the same becomes due—"that when said company shall have prepared as aforesaid a second section or any additional number of sections of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes and equipments as provided in tho first section of this act, and the Governor shall be notified of the fact as before provided, he shall in like manner issue to said company like bonds of the State of Tennessee to an equal amount with that before issued under the first section of this act, for each and every section of twenty miles of said road so prepared as aforesaid, but upon the *terms* and *conditions* hereinbefore provided, and upon the issuance of said bonds, the *State of Tennessee shall be invested with a like lien or mortgage*, without a deed from said company, upon said stock and upon said first and additional section or sections of said road so prepared, upon the rails and equipments put, or to be put, upon the same, for the payment of said bonds and the accruing interest thereon; *Provided*, That if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified,

shall be less than thirty miles in extent, bonds of the 49
State shall be issued for such section, or such railroad
as may be less than thirty miles in extent, for an
amount in proportion to the distance, as provided in
this act, but upon the same terms and conditions in all
respects as required for the bonds to be issued for other
sections of said road. And when the whole of said
road shall be completed, the *State of Tennessee* shall be
invested with a lien, without a deed from the company
upon the entire road, including the stock, right of way,
grading, bridges, masonry, iron rails, spikes, chairs and 50
the whole superstructure and equipments, and all the
property owned by the company, as incident to, or
necessary for, its business, and all depots and depot
stations, for the payment of all of the bonds issued to
the company *as provided in this act*, and for the in-
terest accruing on said bonds. And after the Governor
shall have issued bonds for the first section of the road,
it shall not be lawful for said company to give, create
or convey to any person or persons, or body corporate
whatever, any lien, incumbrance, or mortgage of any 51
kind which shall have priority over, or come in conflict
with, *the lien of the State hereby secured*, and any such
lien, incumbrance or mortgage shall be null and void as
against *said lien or mortgage of the State, and said lien
or mortgage of the State* shall have priority over all
other claims existing or to exist against said company."

Respondent denies that the payment of the interest
upon said bonds and at their maturity of the bonds
themselves, contemplated by said act, was a payment 52
by the railroads to the bondholders—or that the latter
had any claim or recourse against said companies. On
the contrary, as before stated, as between the bond-
holder and said companies, or either of them, no privity
of contract, or relationship of any other character ex-
isted. The railroads were not parties to the bonds so
issued, either as principals, endorsers or guarantors—

53 their names nowhere appeared upon the same; nor, as before stated, did such holders know or care to what railroad the bonds they held were issued—until recently, and when their apprehensions as to the payment of the interest or principals of said bonds were excited, by the failure of the State of Tennessee to meet said interest, or make provision for the ultimate payment of the principal. After repeated efforts on the part of said bondholders within the last few years to induce successive Legislatures to make such provision, and
54 their failure to accomplish anything in that direction, and after repeated efforts to induce and effect a compromise with the said State of her indebtedness on said bonds—which also were unsuccessful—they now, for the first time, have bethought themselves of their lien upon the railroads. Respondent charges upon information and belief, that the complainant was an active and prominent participant in all said efforts to induce a compromise and settlement of said State debt.

55

Respondent submits that the *payment* of interest and principal contemplated by said act was to be in the manner provided therein. The method by which said companies were to pay the interest aforesaid, set forth in the fifth section of said act—which provides "that it shall be the duty of said company to deposit in the Bank of Tennessee at Nashville, at least *fifteen* days before the interest becomes due, from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange and
56 necessary commissions, or satisfactory evidence that said interest has been paid or provided for, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the comptroller to report that fact to the Governor." Said section further provides that thereupon it shall be the duty of the Governor immediately

to appoint some suitable person as receiver, to take pos- 57
session of, and operate said road, and receive the rents, profits, issues and dividends of said road, and pay over the same under the direction of the Governor toward the liquidation of such unpaid interest.

Respondent further submits, that by a proper construction of said act, not only was no obligation imposed on the railroad companies to pay the interest accruing on the bonds so loaned them *to the holders* thereof —but said companies were not even required to pay 58
the *interest as such* to the State. Their undertaking, as expressed by the terms and conditions of said act, was to *provide a sum sufficient to pay* the interest on said bonds—and deposit the same in the Bank of Tennessee, fifteen days before such interest fell due. When this was done, their liability was at an end. Respondent says that the Bank of Tennessee was an institution created and wholly owned by the State—performing the functions of her fiscal agent. That said bank was established by an act of the Legislature passed January 59
19th, 1838, entitled "an act to establish a State Bank, to raise a fund for internal improvement and to aid in the establishment of a system of education"—in which it was, among other things, provided, "That a bank shall be, and is hereby established, in the name and for the benefit of the State, to be known under the name and style of the Bank of Tennessee, and the faith and credit of the State are hereby pledged for the support of said bank, and to supply any deficiency in the funds hereinafter specially pledged, and to give indemnity for 60
all losses arising from such deficiency." That all funds belonging to the State were deposited in said bank—and all disbursements of the State were made by checks of the various State officials upon it—or directly by said bank, as the State's agent, and the said bank was from the time of its creation, and during its existence, which continued for many years after the passage of

said act of February 11th, 1852, to all intents and purposes, the Treasury of the State—and the depositing the sum aforesaid by the railroad companies with the bank, was practically a payment to the State, and was so intended and understood by all parties in interest. Respondent says that from the time said law went into practical operation, to the period the Bank of Tennessee ceased to exist, the latter received said deposits from respondent for and on behalf of the State—and the same with the moneys received on that account from the other railroad companies was placed to the credit of the State, toghther with moneys received from other sources—and all of which, in one common fund, was used by the bank in payment of interest on any and all the bonds of the State, without regard to the purpose for which they were issued; that said bank at no time held such deposit or payment on account, or to the credit of the companies so paying it in, or subject to their order or disposition, nor in any other capacity than as the agent and depository of the State. Respondent asks leave to produce upon the hearing, a properly authenticated copy of said act.

The payment of the principal of said bonds contemplated by and provided for in said act, was, as aforesaid, not a payment by said companies to the holders thereof, but a provision by said companies through a sinking fund of an amount sufficient to pay said bonds at their maturity or before that time. The seventh section of said act provided, that at the end of five years after the completion of their road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the Treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said com-

pany, the bonds so paid in shall be a credit on the 65
bonds issued to the company. And bonds so paid in, and the interest accruing thereon from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be a credit as aforesaid, and shall be cancelled. And should said company fail to comply with the provisions of this section, it shall be proceeded against as provided in the fifth section of said act. 66

It will thus be seen that the only payment required by said act on the part of said companies, was *a payment to the State alone*, and for its security and indemnity against loss on account of her bonds issued to said companies as aforesaid. The Legislature evidently supposed that the various companies so receiving State aid would complete their respective roads very rapidly, having through subscriptions for stock, and the sale of bonds received from the State adequate funds in hand 67
for that purpose. Five years after their completion, the payments to the sinking fund was to begin—and as the sinking fund was with a view of providing a sum sufficient to pay the principal of said bonds at their maturity—it was of course the belief of the Legislature that the payment of the one per cent. per annum from the time indicated in said section, would answer the purpose for which said sinking fund was created. And a simple calculation will show that they were not
wrong in so supposing. Respondent says, therefore, 68
that from a proper construction of the sections of said act hereinbefore referred to, that the holders of State bonds issued under said Internal Improvement Act had no lien or mortgage, on the property of said companies, and that the State of Tennessee in reserving the same did so, not as trustee, nor in any other fiduciary capacity, for or on account of said bondholders—but

for her sole indemnity, benefit and security. Not only is this evident from the sections of said act creating said lien or mortgage and those with reference to the payment of the interest and the creation of the sinking fund for the purposes aforesaid; but this view is further fortified and made certain by a reference to, and construction of, other sections of said act, and also by a reference to and construction of other acts prior thereto, and of acts subsequent to said Internal Improvement Act, as also by the conduct and dealings of the State of Tennessee with respondent, the Mobile and Ohio Railroad, and the other companies receiving bonds under said act of February 11th, 1852.

Respondent further answering, says, that the first section of said act, which, as above stated, set forth in detail the terms, conditions, limitations, upon which the Governor of the State should issue the bonds aforesaid and to the companies aforesaid and the amount per mile, provides, among other things already specified and not now necessary further to be enumerated, that before the issuance of said bonds, it should be shown by said company to the Governor, with reference to the first section, then graded, bridged and prepared for the iron rails, "*that said section or any part thereof is not subject to any lien whatever other than that created in favor of the State by the acts of* 1851-2." There are two acts of the Legislature of that session prior to the Internal Improvement Act of February 11th, 1852, which grant aid to railroad companies, viz: The act of January 15th, 1852, authorizing and instructing the Governor of the State to issue not exceeding three hundred thousand dollars of coupon bonds of the State, to aid the East Tennessee and Virginia Railroad Company in the construction of bridges on their road, upon the terms and limitations prescribed in said act; and the act of February 4th, 1852, which is entitled an act to aid in the completion of the East

Tennessee and Georgia Railroad, and which authorizes 73
and requires the Governor to issue to said road coupon bonds of the State of Tennessee sufficient to pay for the construction of a bridge across the Tennessee river, not to exceed one hundred thousand dollars. By the terms of the first of these acts a lien or mortgage was expressly reserved. Respondent calls attention to the language used in the creation of said lien or mortgage, which is as follows, viz:

SEC. 3, *Be it enacted*, That se soon as the bonds are 74
issued for the first section of forty miles, as provided in the first section of this act, the said bonds on the issuance thereof shall constitute a lien upon all the stock of said company, upon the road-bed, masonry, bridges and other property of said company, and *the State shall be invested with such lien on, and by virtue of the issuance of said bonds without a deed from the company* for the payment of said bonds and interest accruing thereon. And whenever the bonds are issued for either or both of said sections of 75
forty miles as specified in the first section of this act, the State of Tennessee shall, on and by virtue of the issuance of said bonds, be invested with a like lien or mortgage on said sections for the payment of said bonds and the interest thereon, including road-bed, masonry and bridges on all of the said sections provided for in this act, and on all the stock of said company, without a deed from the company, and said lien or mortgage shall have priority over all other claims against said company, and all liens created by the com- 76
pany after the issuance of the bonds for the first forty miles of said railroad shall be void *as to the liens of the State of Tennessee hereby created* for the payment of the bonds issued under the provisions of this act, and the accruing interest thereon, and the said *liens of the State* shall extend to and embrace the entire railroad, its superstructure and equipments, after completed,

77 and so continue until said bonds and interest thereon are paid off and discharged, and without a deed from the company.

Respondent, further answering, calls attention to the language of the said act of February 4th, 1852, creating said lien or mortgage, which is as follows:

Be it enacted, That the express conditions on which any bonds under this act shall be issued to said company are, that upon the issuance of said bonds the said
78 railroad and bridge, with all the appurtenances thereto belonging, and the interest of the individual stockholders therein, and the tolls, issues and profits of said road and bridge shall be, and is by force of this act, *vested in the State for the security of the State*, against the payment of the bonds issued under this act, and the interest thereon; and the State is hereby declared to be vested with all the right to have and hold upon the issuance of the bonds authorized by this act, the entire
79 road and bridge, and all the appurtenances thereto belonging, and all the tolls, issues and profits of the stock, for the security of the payment of said bonds and the interest thereon accruing, as a mortgage to secure the payment of the same, and said road and all its appurtenances of every kind and description, shall be subject to any law that has been or may hereafter be passed for the enforcement of mortgages in lien cases."

Respondent avers that it is to the liens created by the said acts of January 15th, 1852, and of February 4th,
80 1852, to which the clause above quoted of the first section of the act of February 11th, 1852, has reference, and it calls attention to the fact that the language of the third section of said act of January 15th, 1852, creating said lien, and which is set forth above, is substantially, and almost literally, the same as the third and fourth sections of said act of February 11th, 1852, which complainant alleges creates a lien on the property

of said companies in favor of the holders of the bonds 81
issued by virtue of and under said act. But the said clause of the first section of the act of February 11th, 1852, declares that the lien reserved by the said act of January 15th, 1852, to be a *lien in favor of the State.* Respondent therefor submits that the proper construction of the clause aforesaid and a comparison of said section three of act of January 15th, with section three and four of the act of February 11, 1852, is a conclusive Legislative declaration on the very face of the act under which complainant and his associates claim title, that 82
the claim of complainant is unfounded, and that the lien reserved by said act was a lien in favor of and for the benefit of the State alone.

Respondent says that the 3d section of the act of February 4, 1852, above set forth, in express terms declares the lien or mortgage thereby reserved and secured to be "*vested in the State for the security of the State.*" The idea that the holders of the bonds issued under said act are *cestui que trust* having an interest in or 83
claim upon the property embraced in said lien, is expressly negatived. There can be no pretense here that the State occupies any trust relation whatever towards said bondholders, or that they have any collateral or other security beyond the solemn promise of the State to pay according to the tenor of her bond. Said clause of the 1st section of the act of February 11, 1852, declares virtually that the lien herein created is in substance and effect the same as that created by said act of January 15, 1852, viz.: *in favor of the State and for the* 84
security of the State. Respondent therefore submits that said acts of January 15th and February 4th, 1852, above set forth, being referred to by said clause of 1st section of the act of February 11, 1852, became a part of said act as fully as though they had been incorporated therein, and all holders of bonds under said act, including complainant, are charged with notice thereof.

85 And respondent submits, that when so taken and construed together, they are a plain legislative declaration that the lien or mortgage reserved in said act of February 11, 1852, was personal to the State, for the benefit of the State alone, and that the bondholders had no interest in and could hope for no benefit from the same. Respondent asks leave to produce duly authenticated copies of said acts upon the hearing, and that the same may be considered as fully as though set forth at large herein.

86 Respondent, further answering, says that the 2d section of said act of February 11, 1852, provides that the bonds so to be issued under the 1st section of said act shall not be used for any other purpose by said companies than for procuring the iron rails, chairs, spikes and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same, unless upon the affidavit of said president and a resolution of a majority of the board of
87 directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes and equipments for said section, and for putting down said iron rails; and the Governor shall have power to appoint a commissioner to act under oath in conjunction with said president in negotiating said bonds for the purposes aforesaid, and to act in any other matters pertaining to said company, when *the interest of the State*, in the opinion of the Governor, may require it." It avers that said section,
88 taken in connection with section 1 already set forth, clearly shows an anxious desire on the part of the Legislature to throw such safeguards around the issue and use of said bonds as would make their application to the purposes contemplated by said act absolutely certain. Not only were the companies compelled to show, by statements and affidavits of their presidents, boards of directors and chief engineers, that the re-

quired subscription of stock had been made, and the 89
prescribed section of said roads in the requisite state of preparation, but, as an additional precaution, the Governor was authorized to appoint a commissioner *to represent the State and protect her interests* in all matters growing out of the issue of bonds to said companies under said act. But in guarding interests existing thereunder, and protecting them from threatened or possible injury, no interest is spoken of or alluded to *save the interest of the State;* nor is any allusion made to any supposed interest of the purchasers of said 90
bonds, nor to the protection of any rights or interests of theirs. The Legislature, in this section, in harmony with what respondent has shown was their intent and purpose in sections 3, 4, 5 and 7 of said act, did not guard or attempt to guard any supposed interest of the holders of said bonds, for the reason that they had no rights or interest that could be jeopardized or in any way affected by reason of the improvident issue of said bonds or the misapplication of the proceeds of the same when sold. The State of Tennessee, however, could 91
only hope for reimbursement from the companies to whom she had loaned her bonds, in the event said companies were in condition to perform, and did perform, and comply with the requirements of said act; hence the precautions taken herein and elsewhere in said act.

Respondent says, that, having in view this necessity for guarding at every step the *interests of the State*, and in order to keep the Governor and Legislature 92
thoroughly informed as to the internal workings and operations of said roads, and as to their present and prospective condition, section 8 of said act enacted: "That the president of the company shall make semi-annual reports, under oath, to the Governor until the completion of said road, setting forth fully the condition of the road and of the company, and after its com-

93 pletion, he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings and dividends, and what per cent. is paid on the stock to the stockholders; and said reports shall be consolidated every two years by the president of said company, and said consolidated reports shall be laid before the Governor by the first of September every two years after the completion of said road, and the Governor shall lay
94 said report before the Legislature for its action at the next meeting thereof after said report is made."

And in order to enable the State to act promptly and effectively in case the reports called for and required by the foregoing section should show the condition of any or all of said companies to be unsatisfactory, or any other unforeseen contingency should arise tending to the injury of the State's interests arising under said act, section 12 of said act provided: "That the State of
95 Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the *interest of the State* and to *secure the State against any loss in consequence of the issuance of bonds under the provisions of this act*, but in such manner as not to impair the vested rights of the stockholders of the companies."

Respondent alleges that the provisions of said section 12 are utterly inconsistent with and antagonistic
96 to the theory of complainant, that the lien reserved by said act was for the security of the bondholders, and that as to them the State of Tennessee was a mere trustee, holding said lien for their benefit. It does not seem credible that if, as complainant alleges, the lien created by said act run with the bonds issued thereunder, and was intended to inspire confidence in capitalists, and assist their sale and increase their value in

the market, such powers would have been reserved by 97
the Legislature. The bonds, it is alleged, were purchased on the faith of the security and indemnity offered by the lien aforesaid; and yet it is held by so slender a tenure that the Legislature may weaken, modify or destroy it with a breath. So far, however, from this construction of complainant being true and correct, respondent avers that the object of said section 12 was just what its terms import. It was manifest to the Legislature that conditions and contingencies, seen and unforeseen, might arise under which the State of 98
Tennessee would find it to her interest to require additional guarantees, or to impose additional regulations restrictions, or to modify or annul those in existence by virtue of said act, or to increase the sinking fund therein provided, and so shorten the period in which said companies were to provide for the payment of said bonds, or summarily to wind up and end altogether her connection with them by requiring them to pay into the State treasury or otherwise a sum sufficient to redeem said bonds. Hence the Legislature reserved to 99
themselves the most absolute power and control over said companies, and the free and unrestricted right of legislating untrammeled by the fetters of previous contracts or constitutional prohibitions. The only curb upon her power and control over said companies and their property, was in favor of the vested rights of their stockholders, which were not to be impaired by any subsequent legislation. With this limitation, the Legislature reserved the right to pass any law that in their judgments was demanded by considerations of 100
public policy, *in the interest of the State, and to protect the State against loss*, in consequence of the issuance of bonds under the provisions of said act.

Respondent asserts and charges, after a careful review of said act of February 11, 1852, that whilst as already shown at every turn, allusions are made to the lien of

101 *the State*, and as being reserved and secured for the benefit of the State and for the security of the State, and to secure the State against loss by reason of the issuance. And whilst the interests of the State are sedulously kept in view and made one of the chief objective points of said acts, nowhere in said act is anything said as to the lien of the bondholders, nor that the same was intended for their benefit, nor that they had any interest therein. Nor is any effort made to protect such supposed interest, nor to
102 secure them against loss or damage by reason of the purchase of said bonds.

Respondent charges that the construction placed by it on the act of February 11, 1852, as above set forth, is the one upon which subsequent Legislatures of the State have based their action from time to time, and up to the years 1868-70, when they finally severed their connection with the railroad companies receiving aid under the said act, by legislative enactments which
103 will be more particularly hereinafter refererred to. And further, that the State officials whose duty it was to carry into effect the provisions of said act as evidenced by their official acts, declarations, and course of conduct extending over a period of more than twenty years, have so construed, regarded, and acted upon it. In this connection respondent will call attention to said acts and doings, somewhat in detail.

Respondent concedes that the act of February 8,
104 1854, increased the amount of State bonds which were to be issued the several companies enumerated in the act of February 11, 1852, from eight thousand to ten thousand dollars per mile. Respondent submits that the fact of so increasing the amount was of itself a claim by the Legislature of exclusive and unlimited control over the lien or mortgage reserved and secured by said act of February 11, 1852, and that the same was for the

exclusive benefit and indemnity of the State of Tennes- 105
see. If the same had been intended, as complainant alleges, as a security for the payment of said bonds, then it would have been an infringement upon the rights of the holders thereof to have increased the charges upon the property liable to indemnify them against loss. Said act of February 8, 1854, also provided for the issuance of bonds of the State to the various companies entitled to aid under the act of February 11, 1852, for bridge purposes to the maximum amount allowed to be issued under said act of February 106
4, 1852, to aid in the completion of the East Tennessee and Georgia Railroad, and upon the terms and conditions mentioned in said act (except the second section, which relates to the sinking fund for the payment of principal and interest of the bonds issued under said act), and also in the fifth and sixth sections of an act passed February 26, 1852, entitled "An act to charter the Chattanooga, Blue Spring and Cleveland Railroad Company, and for other purposes. This was a legitimate exercise of power by the Legislature only upon 107
the assumption that said lien or mortgage created by the act of February 11, 1852, as aforesaid, was the sole property of the State. It would have been a violation of the rights and an impairment of the security upon the faith of which complainant alleges he and others bought their bonds to have issued new bonds, and as a security for their ultimate payment with the interest thereon, reserved a lien and mortgage on said railroads, and for the sole benefit of the State and paramount to all claims and encumbrances, when the very same pro- 108
perty was already charged with a lien or mortgage in favor of such bondholders.

Respondent alleges that the lien and mortgage reserved in said acts of February 4, 1852, and of February 8, 1854, do not differ in its legal intendment and effect from the lien or mortgage secured by the act of February

11, 1852, and that both are for the sole benefit of the State of Tennessee as before stated. Said first named acts declare it to be a lien and mortgage vesting in the State for the *security of the State.*

Should this honorable court be of the opinion that said act of February 11, 1852, does create a lien running with said bonds for the payment of the same and for the benefit of said holders, and the said lien is vested in the State of Tennessee solely as trustee, as claimed by complainant, all of which respondent denies, and that said act of February 4, 1852, and February 8, 1854, do not create a lien in which the holders of said bridge bonds have any interest, and that the same is for the sole security of the State, then respondent submits that complainants must fail in their case, for the reason that the said bonds do not on their face disclose whether they were issued for the purpose of buying the iron rails and equipment for said roads or to aid said roads in building bridges over the streams mentioned in said bridge acts.

The Legislature which enacted the act of February 8, 1854, regarded it as amendatory of, and in harmony with said act of February 11, 1852, as shown by its title, which is An act to amend an act passed 11th February, 1852, entitled "An act to establish a system of Internal Improvement in this State," and the Governor who issued, and the Comptroller who kept a record of the amounts, numbers, and series of said bonds, acting under this impression and belief, did not discriminate either by any notice on the face of said bonds, or by any record or other means of identification between them, but the bonds which were, as a matter of fact, issued for bridge purposes, are stated to be issued under the Internal Improvement act of February 11, 1852, and no reference is made to said acts of February 4, 1852, and February 8, 1854. This respondent does not know,

nor has it any means of ascertaining from the books, 113
records, or papers of, and pertaining to the Mobile and Ohio Railroad, the *numbers* of the bonds issued to it by the State under said act of February 8, 1854, although it does know and charges that it did receive $116,000 of said bonds, under said act, to build bridges over Obion and Forked Deer Rivers, but they were not specially marked and designated save as bonds issued under and by virtue of said Internal Improvement Acts aforesaid; respondent therefore demands strict proof of complainant that the bonds he holds, if any, were not issued 114
for bridge purposes.

Respondent admits the Legislature of the State passed an act on February 21, 1856, of which Exhibit D of complainant's bill is conceded to be a correct copy, requiring the several railroad companies who had received, or who might thereafter receive, bonds of the State to aid in the construction of their several roads under the provisions of said Internal Improvement Act of February 11, 1852, and the acts amendatory thereto, at the expiration of five years from the issuance of 115
their several bonds, to set apart and pay over to the Treasury of the State *two per cent. per annum* upon all bonds which had been, or might thereafter be, issued as aforesaid, as a sinking fund for the ultimate redemption of the bonds issued as aforesaid, and that when so paid over the Governor, Comptroller of the Treasury, and President of the Bank of Tennessee, who were thereby constituted a board of commissioners for the management, government, and control of said sinking fund, should invest in the bonds of the State and re- 116
invest all accruing interest in like securities.

Respondent further admits that said Legislature, on the 20th of March, 1860, passed an act entitled "An act to provide for the equalization and investment of the sinking fund on the bonds issued to or endorsed for railroads in this State." Said act provided "That the

117 money or bonds that have heretofore or may be paid by the cities or railroad companies of this State, to the sinking fund commissioners by the 1st of January, 1860, together with the accruing interest thereon to that date shall be passed directly to the credit of the party having so paid the same, and be a release to said party for that amount on the debt due by them to the State of Tennessee ; that said bonds should be cancelled by said commissioners, and if endorsed bonds, returned to the company issuing the same ; and if State bonds,
118 filed in the office of the Secretary of State."

Said act required the railroad companies aforesaid to pay two and one half per cent. per annum on the amount of bonds so received by them as a sinking fund, and that said companies might pay said sinking fund in cash or in lien character of bonds that may have been issued or endorsed by the State for said company at their face or par value ; that if said sinking fund was paid in money, the Commissioners should in-
119 vest it immediately in bonds of the State, and have the same canceled and filed as heretofore provided. Such bonds are to be of the same character as those issued to said company.

It was further provided that the sinking fund, when paid, in all cases, should *be passed directly to the credit of said company, and be a release to said company from that amount due by them to the State*, and that each company should provide the interest semi-
120 annually as now provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued, as heretofore provided. It was also made the duty of the Comptroller to keep a regular account against each company, charging them with the amount of bonds originally issued to it by the State, and crediting them by the amount of the sinking fund paid, and he was required to furnish

the Treasurer of the State with a statement of the 121
amount due by each company on the 1st of June and December of each year, that he might know how much interest each company had to pay.

Said act was declared to be in full force from and after its passage, and repealed all laws in conflict with it.

Respondent does not contend, as charged by complainant in his bill, and does verily believe, that the 122
said acts of February 26, 1856, and of March 20, 1860, contemplated that a payment by said company of the per centum on the bonds originally issued, as aforesaid, into said sinking fund should constitute a payment *pro tanto* of the debt due by said companies to the State on account of said loan of bonds, and to that extent lessened the lien or mortgage on their said roads, and that when said sinking fund had accumulated a sum equal to the aggregate amount of said bonds originally loaned to said company by the State, the same 123
was a payment and satisfaction of said loan, and a discharge of said lien or mortgage. Said last acts were passed in pursuance of the reserved rights of the Legislature, under the terms and provisions of the 12th section of the act of February 11th, 1852. The first of these acts increased two-fold the percentum on said bonds that said companies were required to pay into said sinking fund, and required the payment to begin in five years from the issuance of said bonds, instead of five years from the completion of said roads, as pro- 124
vided in the sixth (the sinking fund) section of the said Internal Improvement Act of February 11, 1852, and in the event of failure to comply with the requirements of said act, authorized a sale of the road, These changes were additional burdens upon said companies, and were only valid and obligatory upon them on the assumption that the said provisions affected the *inter-*

125 *ests of the State.* The second of said acts (the act of March 20, 1860) makes important changes again with reference to said sinking fund, and simplifies the methods upon which it is to be conducted. It declares that the sinking fund and its accumulations up to the 1st of January, 1860, should be passed directly to the credit of the company paying it in, and be a release for that amount on the debt due by them to the State of Tennessee, and that the two and a half per cent. on amount of bonds loaned, when paid in,
126 should also be a credit and payment *pro tanto* of the State. The debt which said companies owe is here declared *to be a debt due the State of Tennessee.* No intimation is given that said debt is due and owing to the bondholder. The State, through her Legislature, here deals in her sovereign capacity with a debt due her alone, and legislates upon a subjects affecting alone her interests, as she had expressly reserved the right to do, and that, too, in a manner negating and hostile to complainant's alleged rights.

127

As heretofore stated, respondent, the Mobile and Ohio Railroad Company, received and negotiated all of the bonds loaned it by the State subsequent to the passage of said sinking fund act of February 28, 1856, and more than $400,000 of said bonds were so received and registered after said act of March 20, 1860. Said bonds were therefore negotiated with those laws in full force, and complainant and all others purchasing the same were charged with notice of said acts. And re-
128 spondent submits, that even as to those bonds so received by the Mobile and Ohio Railroad Company from the State, and negotiated prior to said act of March, 1860, the holders of the same are bound by the terms of said act, however injurious or inimical to their supposed rights, inasmuch as it was enacted in pursuance and execution of a power expressly reserved, as aforesaid, by sec. 12 of said act of February 11, 1852.

Respondent further shows, that on the 1st of February, 1861, the Legislature of said State suspended for one year so much of the said act of March 20, 1860, as required said companies to pay two and one-half per cent. per annum on the amount of the bonds so issued to them, and afterwards, on the 7th of May, 1861, they passed an act authorizing the Governor, at his discretion, to appoint a receiver, or allow the management and control of said companies to remain in the hands of their officers, *as the interests of the State might suggest.* This was the last legislation on the subject prior to the outbreak of the late civil war. 129 130

Up to this time, as before stated, the credit of the State was above suspicion, and there was no doubt in the minds of the Legislature or the people as to her entire ability and perfect willingness to pay her obligations.

Respondent avers that these last mentioned acts, suspending the payment of the sinking fund, and authorizing the Governor to appoint receivers to take possession of said roads, were both in line and keeping with the uniform construction which the State through her Legislatures, had placed upon the act of February 11, 1852, and the lien or mortgage retained therein. Upon the assumption of complainant, the provisions of said act were for the benefit of the bondholders, and the State was a bare trustee, and any attempt to relieve said companies from their obligations to pay into the sinking fund the amount fixed by statute was an invasion of the rights of such bondholders, impaired the obligation of their contract, and was null and void. 131 132

Respondent further charges that the assertion by said Legislature of the right to take possession of and control the said railroads *in advance* of any default by said companies, was also, in this view, an usurpation of

power and violation of the rights of said companies. But upon the theory heretofore set forth by these respondents, upon which the State acted, said legislation was, although radical in its character, strictly within the powers reserved in said sec. 12 of the act of February 11, 1852.

Respondent, further answering, says that no interest was paid by the State upon any of her bonded debt during the continuance of said war, but immediately thereafter her Legislature convened, and among the first subjects of consideration was the means of providing for the payment or settlement of the past due interest on that part of said debt, created under the act of February 11, 1852.

On the 23d of November, 1865, an act was passed, the title of which explains its purpose, and is as follows: An act to amend an act entitled "An act to establish a system of Internal Improvements in this State," passed the 11th of February, 1852. This act instructed the Governor to issue six per cent. coupon bonds of the State similar in character in every respect to the bonds issued under the act of February 11, 1852, and maturing at the same time, to an amount sufficient to pay off all the bonds and interest past due, as well as that to fall due January 1, 1866, or any bonds that may fall due during the year 1867, etc., and further provided that the amount of interest then due, or that became due by January 1, 1866, by any railroad company to the State on bonds issued or endorsed for said company, should be charged up to said company on the same terms and conditions of the original loan, and the State shall have the same liens upon each of said roads, their franchises and property, for the prompt and faithful payment of the principal and interest of the bonds hereby authorized to be issued to pay the interest on the bonds said company should have paid interest on,

or it has under that law, for the bonds issued under 137
that law.

It was further therein enacted that the companies so receiving aid under said act should pay the interest on said bonds as it matured, in the same manner and under the same rules, regulations and restrictions as were then prescribed as to bonds issued under the act of February 11, 1852; and that the law now requiring all railroad companies in this State to pay into the treasury two and one half per cent. per annum as a sinking 138
fund, on the amount of *their indebtedness to the State, be and the same is hereby suspended until January* 1, 1867, *and said companies are relieved from the payment of the sinking fuad now past due under said law;* and it was made obligatory on each of said companies to pay *four per cent.*, during the year 1867, into the sinking fund "*on the amount of its indebtedness to the State,*" to be paid in bonds of the State of a like character to those issued to said company, and a like amount every year thereafter "*until the whole of their* 139
indebtedness is discharged."

Respondent submits that this act is still another legislative construction of the said act of February 11, 1852, and an explicit declaration that the only debt due and owing by said companies is an indebtedness to the State.

At this time all of said companies had failed to pay in, and were in arrears with the sinking fund more than 140
four years. The Legislature, regarding them as *solely* debtors to the State, treats with them upon that basis, and *ex gratia* release them from the obligation of paying the amounts so past due and owing to said sinking fund. Instead of enforcing the remedies of seizure and sequestration which the 5th section of said act of February 11th gave the State to secure payment of the interest

falling due on the bonds loaned said companies, the Legislature saw proper to charge up said past due interest to said companies, retaining the same liens which said act of February 11, 1852, gave and secured to the State, and authorized the issuance of new bonds sufficient to pay such past due interest; thus of their own motion, and without consulting the said bondholders, waiving the rights of the State to an immediate payment, and issuing new interest-bearing bonds, and securing herself against loss upon these bonds by retaining the same lien upon the same property which was charged by said act of February 11, 1852, and which complainant now claims was for his exclusive benefit.

Further answering, respondent shows that on the 7th of December, 1867, the Legislature of the State passed an act which, among other things, declared that if any of the several railroad companies to whom the bonds of the State have been loaned, shall fail for two consecutive years to pay the interest that may accrue upon the bonds loaned to them severally, then and in that case the Governor, Secretary of State, and Comptroller may, at their discretion, sell said railroad, upon such terms as they may deem best to secure the *interests of the State*, and shall retain of the proceeds of such sale the amounts loaned to said companies and the interest due on the same. This act was an important innovation upon the act of February 11, 1852, and announced a new departure in the policy of the State with reference to defaulting railroad companies. Under the provisions of the Internal Improvement Act of 1852, the only step that could be taken, as has been already shown, in the event of a failure on the part of said companies to provide, in the method therein set forth, an amount sufficient to pay the interest on said bonds was to appoint a receiver and sequestrate the tolls and profits of such defaulting road or roads, until the receiver has

thus collected an amount sufficient to pay said interest, 145
in which event the road was to be returned to the company. This, whilst amply sufficient at and for a great while after its enactment to protect the State against loss, was found, under the new order of things, together with the losses and deterioration during and resulting from the late war, to be utterly ineffective for the purpose to be attained. The State had found herself compelled to appoint receivers and take charge of several of the railroads to whom she had loaned her bonds, and who had failed to provide for the interest 146
on the same. So far from being able to procure the sum requisite to reimburse her for the interest she had paid, or provide for that falling due, on said bonds, said roads, under the management of the State officials, failed to pay current expenses, and became an additional tax and burthen. In this aspect of affairs, the State determined to place herself in a position enabling her to sell said defaulting roads outright. The above mentioned was the result.

147

This act, as did all former acts, when treating of, or dealing with, the lien or mortgage on the roads of said companies, evidently regarded the same as being to protect and secure the State alone, and legislated by virtue of its reserved powers as aforesaid. Had said lien been as complainant claims, retained for the security and protection of the bondholders aforesaid, the said act would have been like many of its predecessors on the same subject, unconstitutional and void.

148

Respondent shows that whilst the Legislature of the State were enacting vigorous measures to enforce a compliance by said railroad companies, with the contract into which they had entered under the Internal Improvements Acts aforesaid, or in default foreclose at once, and finally the lien of the State by sale, they did not at that time abandon the policy inaugurated

147 many years before, but by various acts not necessary to be now set out in detail, gave additional aid to nearly all the companies who were beneficiaries under the acts of February 11, 1851-2, by again loaning them the bonds of the State to an amount aggregating many millions of dollars, and reserving and retaining the same lien and security enuring to the State under said act of February 11, 1852. These bonds were put upon the market and sold. Respondent asks leave to produce duly authorized and certified copies of said acts.

150 Respondent refers to and relies upon these acts in conjunction with those heretofore mentioned, as showing the uniform construction placed upon said act of February 11, 1852, to be as set forth by this respondent. Respondent further alleges, upon information and belief, that these last mentioned bonds were negotiated and sold as aforesaid in the city of New York, where complainant then and ever since resided. That they were quoted daily through a series of years as new bonds of the State, and upon their face showed they

151 were issued as aforesaid and under the act of February 11, 1852. It was a matter of public notoriety in said city, and complainant must have known, and the respondent charges, upon information and belief, did know the terms and conditions upon which said bonds were issued, and that they asserted a claim of lien or mortgage by the State as security against loss, upon the same property as that which he now seeks to subject to the payment of his bonds before issued.

152 Respondent further answering, says it admits that the Legislature of the State of Tennessee passed an act on the 25th day of February, 1869, and on the 5th day of July, 1870, passed an act amendatory thereof, by the terms and provisions of which the respondent, the Mobile and Ohio Railroad Company, and all other railroads which had received State aid under and by virtue of the act of February 11, 1852, and succeeding

acts amending the same, and which owed the State, by 153
reason of her bonds by her loaned to them as aforesaid, were authorized to repay said State the several amounts, or any part thereof, then due on that behalf on any of the bonds without regard to series or number. Said payment, when so made to the full amount due and owing by said companies, or either of them, to be a complete and final discharge of the companies paying, from all further liability on account of bonds loaned as aforesaid under said Internal Improvement Acts, and when part payment only was made, then such payment 154
was to be a satisfaction and discharge of said companies *pro tanto*. The said railroad companies, including this respondent, the Mobile and Ohio Railroad, were thereby further authorized and empowered to issue their bonds payable at a time not more remote than the period fixed in the bonds so paid in and cancelled under the provisions of said acts, and of equal amount and denomination therewith. Said bonds were to be substituted and subrogated to all the rights, securities, liens, and mortgages held by said State 155
under and by virtue of said Internal Improvement Acts, together with all the remedies of sequestration and foreclosure conferred upon said State by said acts. Said railroad bonds were to be certified to by the Comptroller of said State, and to be by him entered in a book to be kept for that purpose, with date, number, and amount. Said certificate was required to be upon the face of each of said substitution bonds, and was required to recite and set forth that said bond was executed and issued, and by virtue of law takes the 156
place of a bond of the State, and that the same is a *first mortgage bond*. Said acts also provided that by and with the consent of the Board of Directors of any of said railroad companies, that any person or corporation, by paying the indebtedness of such railroad company to the State in the bonds of the State at par as provided therein, should be substituted and entitled to

157 all the liens which said State had, and that the Governor and Secretary of State should give such person or corporation a certificate showing the facts, which should be evidence against said companies of such indebtedness.

Respondent does not admit the exhibits attached to complainant's bill which purport to be true copies of said act to be so in fact, but will produce, at the hearing hereof, properly authenticated copies of the same.

158

Respondent further shows that on the 1st day of January, A. D. 1872, it was indebted to the State of Tennessee on account of bonds loaned as aforesaid to said company under the Internal Improvement acts in the principal sum of $1,296,000, and interest on the same, accrued and past due, $489,246, aggregating $1,785,246; that it had prior to that time, and many years before, viz, on the 1st of November, 1853, mortgaged its property and franchises to secure the payment
159 of a series of bonds known as Sterling Bonds, which had been issued by it and sold, amounting to $6,000,000, and also subsequently, on the 15th of February, 1860, had created a second mortgage upon the same property for $1,453,853.47, and besides that it owed a large floating debt, and its road bed and rolling stock were in a dilapidated and ruinous condition. It was evident to its managing officials that it might speedily become impossible to meet heavy demands upon it in view of this state of things, and the declared policy of
160 the State to enforce by the most stringent measures prompt payment of the interest and sinking fund, which, as before stated, had been raised to four per cent. per annum, and which might be further increased at the will of the Legislature. They therefore regarded it as a duty they owed the interests by them represented to accept the proposition of settlement and discharge extended in the legislation of 1869-70

before mentioned. Said respondent, however, was unable to pay out of its own resources more than a very small portion of its said indebtedness to the state. It paid to the extent of its ability, viz, the sum of $100,446, and thereupon requested and authorized Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, by a resolution of its board of directors, to pay in the balance due as aforesaid, with the understanding and agreement that upon so doing they should be invested with all the rights, powers, liens and mortgages of said state. Respondent further shows that in compliance with said understanding and agreement, the said Duncan, Iselin and Wilson did procure by purchase, bonds and coupons of said state to the amount of $1,684,800, and paid the same to the Comptroller of the state on said 1st day of January, 1872, in final settlement and discharge of all claims against said company on part of state, and at the same time received from said Mobile and Ohio Railroad Company a like amount of its bonds, each of which was duly certified by said Comptroller upon its face as required by said acts. Said Mobile and Ohio Railroad Company, also, in due form of law, executed its mortgage constituting the said Duncan, Iselin and Wilson, trustees therein, upon its said property, franchises, fixtures and material, to secure the payment of said substitution bonds according to their tenor and effect, and the same was therein declared to be prior to all other mortgages or other incumbrances upon said property, etc., and all the rights, powers, liens and mortgages enuring to said state under the internal improvement laws aforesaid, were vested and confirmed in said trustees to secure the holders of said bonds as aforesaid.

Respondent shows that Duncan, Iselin and Wilson purchased said state bonds and coupons in open market in said city of New York at their current prices. There was but little if any difference in the value of require-

165 ments of the various series of bonds at that time, and they purchased any bonds coming under the acts of 1869–70. Respondents file herewith, marked as exhibit "A," a statement showing in detail the transactions between said Duncan, Iselin and Wilson and Mobile and Ohio Railroad, and the State of Tennessee, amount paid for bonds and coupons, etc., and pray that the same may be made a part of this answer.

Respondent concedes it claims in view of these facts,
166 that it has fully complied with the provisions of these acts, and that the Mobile and Ohio Railroad Company and its property are released and discharged from all obligation to the state. It further claims that it was never, as it is informed and believes, under any obligation to the holders of the state bonds loaned to it as aforesaid, but submits that even if it was so, such liability, by reason of the premises, no longer exists. Respondent denies, so far as the Mobile and Ohio Railroad is concerned, and upon information and belief as
167 to the other roads, that their officials conceived the project of avoiding any liability to complainants or any one else, on account of said loan of bonds by the state, or that they applied themselves to the procurement of any legislation whatever to the detriment of complainants or other bondholders.

Respondent is not familiar with the circumstances attending the passage of said acts of of 1869–70, and hence is unable to say whether the same as finally
168 passed differed, and if so, in what respect from the draft of the bill as originally introduced. It is not improbable that one or both of said acts were amended in the course of their passage, though as to all this respondent has no knowledge, and if the same can in any way be material, calls for the proof. Respondent did not at this time, nor for many years thereafter, know that said bondholders asserted any claim to the lien

aforesaid, nor did it then, nor does it now believe that 169
the same has any existence in law. It therefore emphatically denies that it knew it was attempting to wrest from said bondholders any lien or other security upon the property of said Mobile and Ohio Railroad Company which was conferred by said Internal Improvement acts, for the payment of the interest and principal of their said bonds. Respondent denies that it is fraudulently pretending, as asserted by complainant, that the Mobile and Ohio Railroad had been released from liability as aforesaid, but says it verily be- 170
lieves that the acts aforesaid are in all respects constitutional and valid, and the action of respondent, the Mobile and Ohio Railroad, thereunder was *bona fide*, and alone upon the consideration before mentioned. Respondent avers that said acts of 1869–70 are in no sense varient from the general tenor of various acts antecedent thereto to which it has already referred, all of which assumed the complete and sole ownership of said lien to be in the State and for her indemnity alone. They attempted to do nothing more than was done by the 171
acts of March 20, 1860, and November 23, 1865, which, as before stated in express terms, provided that a payment to the sinking fund in State bonds of a *like character* with those loaned should be a discharge for so much to the company so paying, and when the full amount was so paid it was to operate as a discharge *in toto*. Respondent submits that under the 12th section of the act of February 11, 1852, the Legislature had full power to increase the annual amount to be paid in to said sinking fund, as was repeatedly done, 172
and to declare as they did that such payments should operate as a discharge of said lien *pro tanto*, and that the acts of 1869–70 were practically but a consistent exercise of the same reserved rights and powers in the interest of the State.

Respondent admits that there is a clause of the act of

173 February 25, 1869, which declares that the passage of said act shall not affect the interest of the bondholders of the State, but respondent denies the construction placed thereon by complainant, and avers that this provision simply meant to reaffirm the liability of the State to them, or possibly was inserted by way of amendment, without thought, at the suggestion of some member as being harmless. This provision was obviously not intended to set at naught the plain declarations and provisions of said act as to the State's
174 exclusive property in said lien and right to disposition of the same, and certainly cannot be tortured into the conferring of any new rights which were not before in existence.

Respondent also admits that the act of January 20, 1870, contains a proviso that its provisions shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State and upon which the State is secondarily liable, nor to the pay-
175 ment of the sinking fund.

Respondent is informed, believes, and so charges, that the word "issued" was, by a misprision of the enrolling clerk of the Legislature at that time, substituted for the word "endorsed," which was the word used in the original bill which passed both houses of said General Assembly, as will be seen by an inspection of their Journals, copies of which respondent will produce at the hearing.

176

Under the act of 1847-8, the State of Tennessee had *endorsed*, upon certain conditions therein specified, the bonds of the Nashville and Chattanooga Railroad Company to the amount of $500,000, and of the East Tennessee and Georgia Railroad Company to the amount of $350,000, as also the bonds of various other enterprises and corporations, which were negotiated and put in

circulation, then outstanding. These bonds are fre- 177
quently referred to afterwards in various acts of the Legislature of the State as "bonds upon which the State is secondarily liable." Respondent avers that it is to these alone said act of 1870 refers in said proviso, and that the same has no reference whatever to those bonds of the State issued under the internal improvement acts aforesaid. This is evident from the context of said act, the express object of which was to authorize a settlement by the railroad companies of their indebtedness to the State under said internal improvement 178
acts. Respondent again denies that the State was in any sense secondarily liable on said bonds, and avers that she was the sole obligor thereupon, and that Mobile and Ohio Railroad Company was in no sense liable and chargeable upon the same.

Respondent, further answering, shows that said Duncan, Iselin and Wilson, trustees as aforesaid, immediately placed said substitution bonds upon the market in the city of New York, where they were publicy ad- 179
vertised and offered for sale, their value being daily quoted upon the stock boards and in the daily press of said city, and during said year 1872 they were sold to *bona fide* purchasers, without notice of the claim now sought to be set up and maintained by complainant and his associates, and in the full and honest belief and upon the faith of the security aforesaid, and that the same was valid and paramount to all other claims upon the said property, franchises, etc.; that the acts of 1869–70 aforesaid were in all re- 180
spects within the scope of legislative powers of said State, and hence constitutional and valid, and in total ignorance that complainant or any other holder of the State bonds originally loaned to said company had or would make any claim of the character now asserted by them in the bill filed herein. Said substitution bonds are still outstanding in the hands of said purchasers to the extent of $1,668.000.

181 Respondent avers and shows thaat the said Duncan, Iselin, and Wilson, trustees as aforesaid, and the said Mobile and Ohio Railroad Company in their dealings aforesaid, with the State and with each other, and with the purchasers of said substitution bonds, acted *bona fide*, and under the implicit belief that the lien or mortgage vested in the State as aforesaid under the acts of Internal Improvement before mentioned, was solely for the benefit and security of the State, and in total ignorance of any right or claim on the part of alleged
182 holders of Tennessee bonds issued in aid of said company. They verily believed then, as now, that the only liability said company was under was to the State as hereinbefore set forth, and that the legislation aforesaid authorizing a settlement by said company with the State, was in all respects valid and binding.

Respondent avers that said Mobile and Ohio Railroad Company and said Duncan, Iselin, and Wilson, were ignorant of the fact that any of the bonds originally
183 loaned as aforesaid to said company were then outstanding; nor were they apprised of the fact, if fact it be, until the short time before the bringing of this suit. The State through payments to, and investments for, the sinking fund as provided in said several Internal Improvement Acts, had retired a large number of the bonds issued under said acts, and likewise had received many millions of said bonds in settlement with the various railroad companies to whom at divers times her bonds had been loaned, and also large numbers of said bonds had
184 been paid into said State from other sources. There were no means accessible by which it was possible to ascertain whether a part or all of the bonds so loaned to the Mobile and Ohio Railroad Company had been thus retired.

Respondent charges that complainant seeks by this suit to seize and appropriate, as a prior incumbrancer,

in advance and to the exclusion of said Duncan, Iselin, 185
and Wilson and their *cestui que* trusts, a security upon the faith of which, as already stated, they have *bona fide* parted with their money. Said Duncan, Iselin, and Wilson, as trustees as aforesaid, now hold, and are in adverse possession of said security, and assert the same to be superior to the claim of complainant and the other holders of the Tennessee bonds loaned as aforesaid to respondent. Respondent avers that this litigation would be vain and fruitless even were complainant successful in the absence of said substitution bond- 186
holders or their trustees as parties defendant herein. Respondent therefore insists that said substitution bondholders or their said trustees, or both, are material and necessary parties to this suit, and it makes this defense, and asks that it be considered as though the same had been set up by plea.

Respondent further shows that the State of Tennessee, as has been hereinbefore set forth at large and in various other ways, asserted and exercised the claim of 187
sole and exclusive control and ownership over and to, the lien or mortgage upon said railroad receiving her bonds under the terms and provisions of the Internal Improvement Laws aforesaid, and utterly repudiated and denied the alleged lien or mortgage now for the first time set up by the holders of said bonds. That the uniform and uninterrupted course of conduct and dealing of her officials with said railroads and said bondholders with reference thereto, was in accordance with this theory. The said bondholders without ex- 188
ception, and during a period of more than twenty years, in various ways assented to and acquiesced in the propriety and validity of this action of the State through her Legislature and officials, and at no time, directly or indirectly, dissented therefrom, or in any manner gave expression or utterance to any claim or right in antagonism thereto until the year 1878,

189 when the same was asserted by the holders of a small number of said bonds collaterally in a cause then pending upon appeal in the Supreme Court of the United States. Respondent shows that this was the case, although the State of Tennessee had emerged from the civil war much exhausted, with shattered resources and impaired credit. During the four years of its continuance she had paid no interest on her bonded debt, and with possibly one or two exceptions, the several railroad companies, including the
190 Mobile and Ohio Railroad, had been wholly unable, and had failed to provide a sum sufficient to pay the interest on the bonds she had loaned to them, and besides, as before stated, were largely in arrears to the sinking fund; that the State had been compelled to fund in new bonds the past due interest on said debt, and afterward, for some years, made irregular and partial payments of interest, and then, for several years, failed to pay any interest altogether. The Legislature passed an act on the 17th of March, 1873, commonly
191 called the funding act, which provided for the funding of the past due interest on her debt up to the 1st day of January, 1874, interest in arrears at that time amounting to more than six millions of dollars, which was accordingly funded: after paying four instalments of interest, the State again defaulted, since which time she has paid nothing. The bonds of the State under her financial policy have steadily depreciated since the year 1865, with the exception of a short period after the passage of said funding act; and are now, and have
192 been for many years, greatly below par. Under and in pursuance of the act of the Legislature of 1869-70 aforesaid, not only had this respondent, the Mobile and Ohio Railroad, discharged its obligation to the State as before stated, but divers others of the solvent railroads who were liable to the State under the Internal Improvement Acts aforesaid, had also taken advantage of said acts of 1869-70, and severed all connection with the

State by a full payment and satisfaction of their said 193
indebtedness. Said railroads also issued bonds of their own in lieu of the State bonds paid in, and upon the same general plan and scheme as that adopted by this respondent, the Mobile and Ohio Railroad Company.

The amount of such substitution bonds is, as respondent is informed and believes, near twenty millions of dollars, the greater part of which have, in like manner as those of respondent, been sold in New York city to *bona fide* purchasers, and are now outstanding 194
in their hands. That these settlements under said legislation of 1869-70 were not all made immediately after the passage of said acts, nor were they made secretely or in undue haste, but, as a matter of fact, extended over a period of near eight years after the passage of said acts. Many of the railroads to whom State aid had been granted as aforesaid were insolvent, and had failed to provide for the interest on the bonds for more than two years, or to pay to the sinking fund the annual amount required by law. The State, after 195
having seized them, and placed them in the hands of receivers, and finding, as before stated, that so far from realizing from that source the amounts necessary to meet accruing interest, she was losing money by operating them at the rate of about $2,500 per day, determined to sell them, and to that end, by appropriate legislation enacted in the years 1870 and 1871, appointed commissioners, who were authorized and empowered to foreclose the lien or mortgage of the State by selling the said roads, and where necessary, to bring suits in 196
the Chancery Court at Nashville for that purpose, making the stockholders, holders of the State bonds issued to such roads, creditors, and all persons in interest parties; that in pursuance thereof suits were brought in said court against a large number of delinquent roads, the parties above mentioned being made defendants, and brought before the said court in due

197 form of law, and upon the hearing of said causes it was ordered and decreed by the court that said roads be sold, and thereupon, after proper and public advertisement, said roads were accordingly sold, and are now, and have been ever since, held in adverse possession by the purchasers at such sales. The said legislation plainly and unequivocally, as did all prior legislation, treated the lien and mortgages upon said delinquent roads as belonging exclusively to the State of Tennessee, and being secured for her sole benefit and indemnity.

198 Respondent further states, upon information and belief, that a short time before the passage of said legislation, a number of persons in said city of New York, purporting to be a committee representing the holders of State bonds issued under the Internal Improvement laws aforesaid, sought the opinion of counsel as to whether a lien existed on said roads in their favor by virtue of said laws, whereupon an opinion was given to the effect that such a lien did exist.

199 Respondent is informed that shortly thereafter counter opinions were given by counsel of great eminence, both in New York and Tennessee. The Legislature, being desirous of having all parties who could by possibility claim an interest in the subject matter of litigation, provided, as before stated, that the said bondholders should be made parties—which was done, as far as practicable, by personal service, and where that could not be had, by publication in due form, accord-
200 ing to the statutes of Tennessee.

Respondent further states, in this connection, that after such opinion and counter opinions were given, nothing further was ever said or done towards the assertion of the claim of the State bondholders to the benefits of the lien reserved to the State under the Internal Improvement Acts, and the intention to set up the same

was abandoned, if it ever existed, and nothing more 201
was heard of the matter until the occasion already referred to, years afterwards.

Respondent charges, upon information and belief, that the great bulk of said bonds were, at the time of and long before the legislation and litigation last above-mentioned, held and owned in said City of New York—then and now the great stock and money centre of the country—and that said holders and owners must have known and did know of the hostile claim of said 202
State, as set forth in said legislative enactment, and said suits and sales thereunder, and that the complainant herein, and those claiming in like right with him, must have been and were informed of the same.

Respondent further answering, shows that since the original sale by Messrs. Duncan, Iselin and Wilson of said substitution bonds as aforesaid, they, together with the like bonds issued and sold by the other railroads as aforesaid, have been daily quoted, bought and 203
sold, publicly and notoriously as other commercial securities are bought and sold in said city of New York.

Respondent, further answering, shows that during all these years complainant and other holders of State bonds have quietly stood by and given no sign that they had, or believed they had, any claim whatever against said roads. Not only has their silence and acquiescence in the legislation aforesaid, and the doings 204
thereunder, been uniform and uninterrupted, but they have affirmatively conceded the absence of any such right by twice funding the past due interest on their bonds, and have made direct and repeated efforts to settle up by compromising with the State at less than par, and taking new bonds in lieu thereof.

205 Respondent, charges that it is only after these efforts have failed, and the State has neglected to make any provision for interest, that, fearing they will lose their bonds entirely, they have bethought themselves to set up the present unfounded, unjust and unequitable claim.

The truth is, as respondent is informed, that complainant and his associates came into possession of said bonds by purchase at a great discount, since
206 the transactions aforesaid under the acts of 1869-70, and with full knowledge thereof; that the others in conjunction with him have bought said bonds as a speculation, and without any honest belief that they were entitled to the benefits of said lien; and they bought them and they are urging this and a series of other suits against the railroads receiving aid as aforesaid, in the hope that by preying upon their fears, and by depreciating the value of their property through a vexatious and harrassing litgation,
207 they may procure some sort of a compromise and settlement of their bonds.

Respondent charges, that not only have they allowed said settlement and substitution between the State, the Mobile and Ohio Railroad, and said Duncan, Iselin and Wilson, to be consummated, and said substitution bonds to be sold to innocent and *bona fide* purchasers, without warning or objection, although at the time fully cognizant of what
208 was being done, but they have, by their conduct, misled and deceived all parties to these transactions, and fraudulently induced them to assume obligations and part with their money and property.

Respondent avers that its property and franchises are now encumbered by the liens and mortgages aforesaid, and otherwise, to an amount largely in excess of

their present or prospective value, and that should 209
complainant's claim prevail, and be held paramount to that of said sustitution bondholders, the latter would practically have no security whatever, and their bonds would be entirely worthless.

Respondent submits, in view of the premises—

1. That even if complainant and his associates originally had any lien or mortgage, which respondent denies, the same was defeasible by the express reservation of the 12th section of said act of February 11th, 1852, and 210
that the State had full power to modify or destroy the same; and that, by virtue of the legislation aforesaid, she has cut off and defeated complainants, and all other State bondholders from any supposed lien or mortgage upon the property of said Mobile and Ohio Railroad Company.

2. That by reason of the laches, deceptive and fraudulent acts and conduct aforesaid of said bondholders, including complainant, it would be against equity and 211
good conscience to allow him or them now to assert and maintain this suit, were the acts of 1869–70 unconstitutional and void, all of which this respondent denies.

Respondent further answering, submits that, should the Court be of opinion that complainant has a lien upon the property of respondent, the Mobile and Ohio Railroad, and that the same was vested in the State of Tennessee as trustee only, and that the legislation of 1869–70, was a breach and violation of said trust on her 212
part, or that such breach could be predicated of a sovereign State—all of which is denied—yet, inasmuch as she had large discretionary powers in dealing with said trust, including the right to legislate with reference thereto, or to foreclose or otherwise dispose of the same, said Duncan, Iselin and Wilson and their *cestuis que trusts* having received the same by transfer and as-

213 signment under the circumstances before mentioned, have acquired a good and perfect title thereto, which cannot be disturbed by complainant; and if the latter has any recourse, it must be against his trustee aforesaid.

Respondent further answering, says it is not informed as to whether any of the bonds loaned, as aforesaid, to the Mobile and Ohio Railroad Company, are now outstanding in the hands of complainant, or any other per-
214 son or persons, nor whether the coupons thereon for the years 1876, 1877, 1878, and for the 1st of January, 1879, are past due and unpaid, as alleged by complainant, although respondent concedes the State of Tennessee has paid no interest on her bonded debt for those years, nor does respondent think this a matter in which they are in any way interested, but should the same be material, calls for the proper evidence thereof. Respondent admits the Mobile and Ohio Railroad Company has made no provision for the payment of said in-
215 terest, as contemplated by the acts under which said bonds were originally loaned; but it denies the said Mobile and Ohio Railroad Company has violated its contract thereunder in any particular, or that, since its compliance with the terms of the acts of 1869–70, it is, or has been required to pay or make provision for the same.

Respondent admits it is provided by the act of February 11th, 1852, that, should any of the companies
216 receiving State aid thereunder, make default in the provision of the interest upon the bonds so loaned it, as required therein, the State should have the right to impound the rents, issues, profits and dividends accruing; and, to that end, shall appoint a Receiver to take possession and control of said road and all its assets, and such Receiver is to continue in possession, operate and manage said road until a sufficient sum shall be re-

alized, exclusive of the costs and expenses incident to 217
such proceedings, to pay off and discharge the interest due on said bonds. But, for the reasons already set forth, respondent denies that complainant has any right to the appointment of a Receiver by virtue of such provision.

Respondent submits further, in this connection, even if the Court should be of the opinion, contrary to respondent's belief, that the lien aforesaid does exist for the benefit of complainant, and that he can assert 218
the same, that he can only do so in the manner pointed out by the statute. Said statute provides that the appointment of a receiver shall be by the State through her Governor; and no other method for the enforcement of her rights is given. Complainant sets up his right by virtue of and under the statute, and can only invoke the remedy therein given. Respondent submits, in any event, that complainant would be limited to the remedy therein prescribed, unless the same had become inoperative without fault of his. 219

Respondent further insists that the State of Tennessee is a necessary and indispensable party defendant herein, and that the same cannot be proceeded with without her.

And now, having fully answered, respondent prays it may be hence dismissed with its reasonable costs, in this behalf most wrongfully incurred.

WRIGHT, FOLKES & WRIGHT. 220

Solicitors for M. & O. R. R.

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EXHIBIT 1.

Mobile and Ohio Railroad Company
In account with the State of Tennessee.

Interest Account.

1866—July 1.	To interest.....	$50,544 00	
1867—Jan. 1.	"	50,544 00	
July 1.	"	50,544 00	
1868—Jan. 1.	"	50,544 00	
222 July 1.	"	50,544 00	
1869—Jan. 1.	"	50,544 00	
July 1.	"	50,544 00	
1870—Jan. 1.	"	60,544 00	
July 1.	"	50,544 00	
1871—Jan. 1.	"	50,544 00	
July 1.	"	50,544 00	
1872—Jan. 1.	"	50,544 00	
			$606,528 00
1866—June —.	By payment...	$50,544 00	
223 Dec. —.	" ...	50,544 00	
1867—July 1.	" ...	47,044 80	
Oct. 28.	" ...	1,052 33	
Dec. 31.	" ...	25,000 00	
1868—Jan. 4.	" ...	25,000 00	
April 3.	" ...	947 56	
June 20.	" ...	50,000 00	
Dec. 28.	" ...	35,000 00	
Dec. 31.	" ...	15,000 00	
1869—Jan. 5.	" ...	170 10	
224 Jan. 15.	" ...	900 00	
June 28.	" ...	50,000 00	
	" ...	450 00	
1870—Mar. 16.	" ...	540 00	
	" ...	9 21	
Jan. 6.	" ...	43,000 00	
	" ...	7,140 00	
Mar. 4.	" ...	2,010 00	

1870—July 28.	By 48 bonds....	48,000 00	225
	" 86 past due coupons ...	2,580 00	
1871—Jan 5.	" 40 bonds ($40-000) and 138 past due coupons ($4-140)	44,140 00	
Jan. 5.	" 1 bond (1,000) and 160 past due coupons ($4,800)	5,800 00	226
	" 7 past due coupons.....	210 00	
	" 1 end'd. bond	1,000 00	
1872—Jan. 1.	" amount to loan account —balance ..	100,446 00	
			$606,528 00

227

STATE OF TENNESSEE, }
Comptroller's Office. }

I, Jas. L. Gaines, Comptroller of the Treasury of the State of Tennessee, do hereby certify that the foregoing is a true and correct statement, as shown by the books of this office.

Witness my official seal and signature, at Nashville, this 24th day of July, A. D. 1876.

[SEAL.] (Signed) JAS. L. GAINES, 228
Comptroller.

229 EXHIBIT II.

Mobile and Ohio Railroad Company
In account with the State of Tennessee.

Loan Account.

1866.			
	To old loans.....		$1,296,000
Jan. 1.	To interest funded.....	388,000	
1872.			
Jan. 1.	To balance from interest account.....	100,446	
			$1,785,246
Jan. 1.	By 1,539 bonds, at $1,000.	$1,539,000	
	" 7,478 coupons, at $30..	224,340	
	" 721 " " 30..	21,630	
	" 11 " " 25..	275	
	" currency.....	1	
			$1,785,246

230

231

STATE OF TENNESSEE, }
Comptrollers's Office. }

I, James L. Gaines, Comptroller of the Treasury of the State of Tennessee, do hereby certify that the above is a true and correct statement, as shown by the books of this office.

Witness my official seal and signature, at
232 Nashville, the 24th day of July, A. D. 1879.

[SEAL.] (Signed) JAS. L. GAINES,
Comptroller.

EXHIBIT III.

233

(Copy.)

Receipt of Agent of the State of Tennessee.

Debt of Mobile and Ohio Railroad Company to the State of Tennessee, due 1st January, 1872.....$1,785,246

Received of R. T. Wilson & Co. on account of the above, subject to the approval of the Comptroller of the State of Tennessee, viz:

234

1,539	six per cent. bonds of the State of Tennessee.....	$1,539,000	
7,471	past due coupons attached thereto, at $30.....	224,340	
721	past due coupons, at $30....	21,630	
11	" " " " 25....	275	
Currency		1	
			$1,785,246

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New York, January 1, 1872.

(Signed) P. C. CALHOUN, Pres't,
Agent of Comptroller of Tennessee.

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EXHIBIT IV.

Statement showing cost in cash to the M. & O. R. R. of $1,785,000 paid by Wilson, Iselin & Duncan, &c., in bonds and coupons to the State of Tennessee.

R. T. Wilson & Co.,

In account with the M. & O. R. R. Co.

By purchase of 1,513 bonds and coupons		
238 past due, in all $1,684,800		$1,070,481 92
Expenses charged M. & O. R. R. Co	65,921 10	
To this has to be added cost of $100,446 paid in to the State by the M. & O. R. R. Co direct	100,446 00	
		$1,236,849 11

239

EXHIBIT V.

Bonds of the State of Tennessee Loaned to the M. & O. R. R. Co.

1856—June 17	Due	Jan. 1,	1892	3886–4185	B.	$300,000
" " "	"	"		4186–4221	B.	36,000
Dec. 12	"	"	"	4948–5047	B.	100,000
1857—Aug. 28	"	"	"	5523–5792	B.	270,000
Nov. 16	"	"	"	5903–5970	B.	68,000
1859—Oct. 6	"	"	1898	10111–10210	B.	100,000
240 1860—July 10	"	"	"	11545–11644	B.	100,000
Sept. 17	"	"	"	367–516	C.	150,000
June 11	"	"	"	1707–1878	C.	172,000
						$1,296,000

EXHIBIT VI. 241

Summary Statement showing the number and character of Tennessee Bonds received from the Mobile and Ohio Railroad Company, January, 1872, in settlement of their indebtedness to the State of Tennessee—the Bonds arranged according to their purpose of issuance, and according to series.

Purpose of Issuance.	Number.	242
Capitol	1	
Funding bonds 1866	235	
" " 1868	20	
Turnpikes	6	
RAILROADS—		
Central Southern	23	
Cincinnati, Cumberland Gap and Charleston	87	
East Tennessee and Georgia	42	
" " " Virginia	91	243
" " " West North Carolina	23	
Edgefield and Kentucky	37	
Evansville, Henderson and Nashville	3	
Knoxville and Kentucky	118	
Knoxville and Charleston	44	
Louisville and Nashville	15	
McMinnville and Manchester	50	
Memphis and Charleston	92	
Memphis, Clarksville and Louisville	73	
Memphis and Ohio	85	244
Mississippi Central	50	
Mississippi and Tennessee	32	
Mobile and Ohio	22	
Nashville and Chattanooga	23	
Nashville and Northwestern	141	
Nashville and Decatur	10	
Rogersville and Jefferson	41	

237

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Nov. 16	"	"	"	...5903-5970 B.	68,000
1859—Oct. 6	"	"	1898	..10111-10210B.	100,000
240 1860—July 10	"	"	"	..11545-11644B.	100,000
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Mississippi and Tennessee	32	
Mobile and Ohio	22	
Nashville and Chattanooga	23	
Nashville and Northwestern	141	
Nashville and Decatur	10	
Rogersville and Jefferson	41	

245	Southern	7
	Tennessee and Alabama	48
	Tennessee and Pacific	30
	Winchester and Alabama	77
	Renewals	14
		1539

According to Series.

	East Tennessee and Georgia	4
246	White letter "B"	418
	" " "C"	54
	Capitol	1
	Special (turnpike)	2
	White letter "D" (1866)	235
	Green	519
	" letter "B"	286
	" " "C" (1868)	20
		1539

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STATE OF TENNESSEE,
Comptroller's Office.

I, JAS. L. GAINES, Comptroller, &c., do hereby certify that the above statement is correct, as shown by the records of this office.

Witness my official seal and signature, at Nashville, this March 1, 1879.

248 [SEAL.] (Signed) JAS. L. GAINES,
Comptroller.

Circuit Court of the United States,

SIXTH JUDICIAL DISTRICT, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, ON BEHALF OF THE HOLDERS OF INTERNAL IMPROVEMENT BONDS ISSUED TO THE MOBILE & OHIO RAILROAD COMPANY, 2

vs.

THE MOBILE & OHIO RAILROAD COMPANY AND OTHERS.

The joint and several answer of Ernst Saladin, of Geneva, Switzerland, and of Augusta Iselin, of Havre, France, and of Alexander R. Duncan, of Arbroath, Scotland, aliens, on their own behalf, and also on behalf of all others in like interest, who were owners and holders of the substitution bonds issued by the Mobile & Ohio Railroad Company, to enable it to pay of and discharge the debt due by it to the State of Tennessee on account of the loans by said State of her bonds to it, under the internal improvement laws, and who were owners and holders of the First mortgage or Sterling Bonds issued by said company, and who have become parties to the scheme of reorganization and compromise between said company and its creditors, as hereinafter set forth, and have accepted and 3 4

are now the holders and owners of new First Mortgage Bonds and Preferred Income and Sinking Fund Debentures, issued under said scheme—to the bill of complaint heretofore filed herein. *These respondents* having been, by order of this Honorable Court, made parties defendants to the said bill of complaint filed herein, enter their appearance thereto, and for answer to said bill, or to so much thereof as they are advised it is material for them to answer, but saving and reserving all right and benefit of exception thereto that may be taken on account of the errors and omissions therein contained, answering, say: That they admit that their co-defendant, the Mobile & Ohio Railroad Company, is a body politic and corporate, and that it was chartered in due form of law by an act of the Legislature of the State of Tennessee, passed on the 28th day of February, A. D. 1848; that it was also duly chartered and incorporated by acts of the Legislature of the States of Alabama, Mississippi and Kentucky; that the object and purpose of such incorporation was to enable it to construct, equip, and thereafter to operate a railroad from the City of Mobile, in said State of Alabama, to some point in the State of Kentucky, near the mouth of the Ohio river; that in accordance with said charter, and in fulfillment of said purpose and object of incorporation, it did thereafter construct, equip and operate such railroad from said City of Mobile to Columbus in said State of Kentucky; that it had power to borrow money, to issue bonds and to execute mortgages for the purposes aforesaid. Rospondents having read and being informed as to the matters and things contained in the answer of their co-defendant, the Mobile & Ohio Railroad Company, filed herein, hereby adopt the same, and all things therein contained and alleged, as fully as though the same were here repeated and set forth, and hereby affirm and declare the same to be true in substance and in fact according to their knowl-

edge, information and belief, and rely upon the same 9
as a complete and perfect answer to said bill.

Respondents, further answering, show that, as stated by the said Mobile & Ohio Railroad Company in its said answer to the bill filed herein, and under the circumstances, for the purpose and upon the considerations stated therein, the said State of Tennessee loaned to the said Mobile & Ohio Railroad Company, at the dates and in the amounts stated therein, the aggregate sum of $1,296,000.00 of her six per cent. coupon bearing bonds—as so much money; that thereby said 10
company became and was indebted to said State in the said sum of $1,296,000.00 on account of such loan; and that said State, as set forth more specifically and at large in said answer, retained a lien as stated upon each section of the road of said company situated in said State as completed, and when the road was completed, then upon the entire road lying and being in said State, including the stock, right of way, grading, bridges, masonry, iron rails, chairs, spikes, and the whole superstructure and equipments, and all the 11
property owned by said company as incident to, or necessary for its business, and all depots and depot-stations, for the purpose of indemnifying and securing said State against loss on account or growing out of the issuance of said bonds, and as a security and guaranty that said company would put said State in funds at the times and in the manner specified in said act of February 11, 1852, to meet the interest as it fell due upon said bonds, and would also through payments to a sinking fund 12
as provided in said act, make provision for the payment of the principal of said bonds at or before maturity, and that said State reserved to herself such rights of sequestration, foreclosure and sale as set forth in said answer. Respondents further show, that on or about the 1st day of July, A. D. 1872, the said Mobile and Ohio Railroad Company, being, as stated

in its said answer, largely indebted to the State of Tennessee on account of said loan of bonds and the accrued interest thereon, and being desirous of paying the said debt due on account of said loan and accrued interest, determined to take action in pursuance of the provisions of said act of February 25, 1869, and the said act of July 5, 1870, amendatory thereof, and so sever all connection with said State growing out of said loan. Respondents show that to this end the Board of Directors of the said Mobile & Ohio Railroad Company, at a regularly called and conducted meeting held on the 25th day of May, A. D. 1871, in due and proper form passed a series of resolutions, reciting, among other things, the fact of the existence of the said debt so due said State by reason of the issuance and loan of said bonds to said company, and the reservation of the lien or mortgage upon said property of said company for the purpose aforesaid, and further reciting [and setting forth the terms and provisions of said act of February 25, 1869; and that the said Mobile & Ohio Railroad Company was desirous to avail itself of the provisions of said law, and to pay said debt, by an issue of its own bonds to be used in the exchange for or purchase of said State bonds, and at the same time to secure to the holders of said substituted bonds of said company in good faith all the protection and security which the said State held for its protection and imdemnity against loss and damage by reason of said loan to said company, by virtue of the laws of said State, were no changes made in the form of security originally held by said State, according to the true meaning of said act of February 25th, 1869, and thereupon, said board of directors, among other things, resolved that the president of said company cause to be issued, under the seal of said company, bonds to the amount of $1,685,000, the same to be signed by the president, or, in his absence, by one

of the vice-presidents, and countersigned by the secre- 17
tary and treasurer, said bonds to be made payable in gold coin of the United States, in the City of New York or in the City of London, at the option of the holder, to be each for the sum of one thousand dollars, or two hundred and five pounds sterling, and payable on the 1st day of July, A. D. 1901. Said bonds to bear interest at the rate of seven per cent. per annum, payable semi-annually on 1st of January and July of each year at New York or London, at the option of the holder, and for which interest coupons or warrants 18
were to be attached to said bonds. That Wm. Butler Duncan, Richard T. Wilson, and Adrian Iselin, their survivors and survivor, were declared the agents of said company to effect the substitution of its said bonds as aforesaid, for the purposes aforesaid, and upon and from and after such substitution, and as rapidly as the same was effected, the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, and their succeseors, were declared to be Trustees for the mutual benefit of said 19
company and the holders of said substitution bonds, and were authorized to protect and defend the rights conferred on the holders of said bonds by the said acts and laws of the said State, and thereby acknowledged and recognized. Respondents file herewith, marked as Exhibit No. 1, a duly authenticated copy of said resolutions and proceedings, and ask that the same be taken and considered as a part of this answer. Respondents further show that in obedience
to, and and in pursuance of said resolutions, the said 20
company, in due form did make and execute its said bonds, numbered from one to sixteen hundred and eighty-five, inclusive, dated July 1st, 1871, for the amounts, payable in the currency and at the time and places required by said resolutions, and being in all particulars comformable thereto, and delivered the same to the said Duncan, Iselin and Wilson,

agents and Trustees, as set forth in said resolutions, and to be used and sold as therein specified and directed; that, at the same time, the said company made and executed its certain indenture of mortgage or deed of trust to the said Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, all then and now citizens of the State of New York, as Trustees, their survivors and survivor and successors, for the purpose of securing and making certain the payment of the principal and interest of and upon said bonds. Respondents further show that it was recited in said mortgage or deed in trust that, under the General Internal Improvement Laws of the State of Tennessee, the said company became liable to the said State in the sum of one million six hundred and eighty-four thousand eight hundred dollars, being the amount of bonds loaned to said company by said State, and, moreover, was under obligation to pay to said State semi-annually an amount sufficient to pay the semi-annual interest on said bonds, as well as an amount of money equal to the principal of said bonds so loaned; and reciting further that, by an act of said State entitled "An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, the railroad companies so receiving aid from the State, the said Mobile & Ohio Railroad Company being one, were authorized to issue their own bonds to an amount equal to the amount so received from said State, and were authorized so to use said bonds as to retire and return to said State her bonds to an amount equal to that loaned to said company or advanced for its benefit, for the security of which new issue of bonds the holders thereof, it is by said act declared, shall, with the consent of such company, be entitled to all the liens, rights and privileges reserved to said State for its own security and protection. Respondents show that said mortgage or deed in trust further recited

that said company had accepted the terms and provisions of said act, and had, for the purposes aforesaid, caused to be issued its bonds as aforesaid to the extent and in the amount and numbers aforesaid, payable at the time and place aforesaid, and had delivered the said bonds, with said coupons attached, to said Duncan, Iselin and Wilson, as agents of said company, to be substituted in place of the claim, demand and liability held as aforesaid against said company by said State, and which substitution said Duncan, Iselin and Wilson, as such agents, were then proceeding to effect; and that in consideration of the premises, and to make good and secure the rights of the holders of said bonds therein described, and who are in fact the payers of the said indebtedness of said company to said State within the meaning of said act of February 25th, 1869, and to the extent thereby authorized the said company did thereby consent that the said Duncan, Iselin and Wilson should pay and satisfy the said debt so due from said company to said State, and did thereby approve said payment, and did thereby consent that upon said payment being made, or to the extent that it was made, and as it should from time to time be made, said Duncan, Iselin and Wilson were, in pursuance of the terms and provisions of said act, vested with all the liens which the said State had or held upon the property of said company, hereinbefore described, with all the rights to enforce the same which said State had, and that said Duncan, Iselin and Wilson, as Trustees as aforesaid, were to have the same rights which said State had, and they were thereby in all respects placed in the same position with reference to said properly liens upon the same, and methods of enforcement occupied by said State, at or before the payment of their said debt against said company. Respondents file herewith a duly certified copy of said mortgage or deed in trust, marked Ex. No. 2, and

29 ask that the same be taken and considered as a part of this answer, as though the same had been fully set forth. Respondents further show that the said Duncan, Iselin and Wilson did shortly thereafter procure, by purchase in open market, in the City of New York, bonds and coupons of said State to the amount of $1,785,246, and did cause the same to be paid to said State on the 1st day of January, 1872, in full and final settlement, payment and discharge of said debt so due the State by reason of the loan of her
30 said bonds as aforesaid, as is more fully set forth in the said answer of said company. Respondents further show that each and every one of said substitution bonds, so delivered by said company, to said Duncan, Iselin and Wilson, had upon it, in strict and full compliance with said act of February 25th, 1869, the certificate of the Comptroller of said State to the effect that said bond was executed and issued, and by virtue of law took the place of a bond issued by said State, and that the same was a First Mortgage bond; that
31 the said bond itself was in accordance with the statements contained in said certificate, and according to its tenor and effect purported to be, and was a First Mortgage bond. Respondents file herewith, marked Exhibit No. 3, a copy of said bonds, each being a facsimile of the others, and of said Comptroller's certificate, and ask that the same be taken as a part of this answer.

Respondents, further answering, show that said substitution bonds were shortly thereafter negotiated and
32 sold by said Duncan, Iselin and Wilson, Trustees, to *bona fide* purchasers for full value, and the proceeds thereof were used in paying for said bonds and coupons of said State, so purchased by them as aforesaid, and used in the payment of said debt due said State by said company, in due form of law and as contemplated by said acts. Respondents further show that said substitution bonds were all negotiated and sold in

Europe to aliens. And this respondent, Ernst 33
Saladin, shows that on the day of
, A. D. 1872, he purchased eight of said substitution bonds, so issued by said company as aforesaid. And this respondent, Augusta Iselin, says that on or about the day of , A. D. 1872, she purchased six of said substitution bonds. Respondents show that they, and as they are informed and believe, the other purchasers of said substitution bonds, bought the same in good faith and paid full value therefor; that they purchased said bonds without knowledge 34
and in ignorance of the claim now sought to be set up by complainants, and in the assurance and belief that said bonds were lawfully issued for the purpose authorized and *bona fide*, relying upon the statements contained in said bonds and the said certificate of the Comptroller of the State of Tennessee upon the face of each and all of said bonds, wherein it was certified that the said company had paid off and discharged the said debt due the said State, which was created by the loan of her said bonds, and for interest thereon, 35
and that said bonds were secured by a first mortgage and were issued under authority of law and took the place of the lien which was held by the State.

Respondents further show that the said Mobile & Ohio Railroad Company did, on or about the first day of November, 1853, issue a series of bonds amounting to the sum of $6,000,000, known as First Mortgage or Sterling Bonds, and contemporaneously therewith secured the payment of the same by a first mortgage on its entire property and franchises, subject, however, to 36
the said lien of the State of Tennessee on that part of said company's road in said State, to secure the payment of the sum due said State on account of the loan of her bonds as aforesaid, and also did, on or about the day of 18
issue a series of other bonds for the purpose of funding the interest past due and unpaid upon said Sterling

Bonds, amounting in the aggregate to about the sum of $1,542,200, and at the same time had secured the payment of the same by a first mortgage on the same property and franchises as was included and embraced in said first or sterling mortgage; and also did on or about the fifteenth day of February, A. D. 1860, issue a series of bonds to about the sum of $1,450,000, the payment of the principal and interest of which was secured by a second mortgage on the same property as was embraced in said sterling mortgage; and also did on the day of 18 issue a series of bonds, known as Convertible Bonds, to the amount of about $600,000.

Respondent Alexander R. Duncan shows that he was, prior to October, 1876, the owner and holder of six of said First Mortgage or Sterling Bonds, each of said bonds being for the principal sum of $1,000 or £225, bearing six per cent. interest, and payable in New York or London, at the option of the holder.

Respondents further show that during the late civil war between the States the territory through which the road of said company ran was the theatre of military operations upon a gigantic scale; that the contending armies upon that part of the road lying in Kentucky, Tennessee, and the northern portion of Mississippi, in many instances, burnt its bridges, tore up and twisted its rails, and otherwise injured and destroyed its property; and that part of said road which ran through the central and southern portions of Mississippi and the State of Alabama was under the control of and was used by the Confederate authorities in such a reckless manner as to run down its rolling stock and wear out its rails and equipments, the result being that at the termination of hostilities in 1865 the road and property of said company had deteriorated enormously in value, and was, practically, worthless without the outlay of a large sum in its rehabilitation. Its managing officials

addressed themselves to the task of putting the road in 41
running order, and succeeded in so doing, not, however, without creating a large floating debt. In the meantime, the company had repeatedly defaulted in its payments of interest, after having funded, as before stated, a large sum, which they were in arrears, and was being sued, and large judgments were being had against it on said floating debt, and the said State of Tennessee was also threatening to seize that part of the road of said company lying in said State to enforce payment of large sums due her on account of interest on 42
the bonds loaned to said company, as aforesaid, and also due to the sinking fund under said Internal Improvement laws. Respondents further state, upon information and belief, that in order to prevent the seizure of the road of said company, and the consequent annoyance and injury resulting therefrom, and for no other reason, the said company availed itself of the provisions of said act of February 25th, 1869. Respondents further show that after said substitution was effected, as before stated, said com- 43
pany, owing to the impoverished condition of the country contiguous to its road, and the general stagnation of business and a succession of other unforeseen contingencies and misfortunes, became unable to extricate itself from its financial embarrassments, fell still further in arrears in the payment of interest on its said bonded and other debts, and, finally, matters came to such a pass that proceedings for the foreclosure of the said substitution, sterling, and interest arrears mortgages were instituted in the year 1875 in the United 44
States Circuit Courts of Alabama, Mississippi, Tennessee, and Kentucky, and decrees were rendered in said courts for the sale of the road, franchises, and other property of said company, all of which will more fully appear by an inspection of the records of this honorable court, in the case of William B. Duncan, Adrian Iselin, and Richard T. Wilson *vs.* the said com-

45 pany, now pending, and to which reference is hereby made.

Respondent further shows, that on or about the 1st day of October, 1876, an agreement was entered into between said company and William H. Hays, then and now a citizen of New York; William S. Pierson, then a citizen of Connecticut, and T. Haskins Du Puy, of Pennsylvania, and certain of the creditors of said company, who then subscribed to said instrument, and each and every of said creditors who should subscribe there-
46 to within the time therein prescribed, wherein the financial difficulties of the said company were set forth, and that by the charters of said company granted by the said States of Mississippi, Tennessee and Kentucky respectively, valuable corporate rights, privileges and exemptions had been bestowed, which would be jeopardized or destroyed by a sale of the property and franchises of said company under said foreclosure proceedings, and, further, that differences and disputes had arisen between the different classes of holders of
47 the securities and evidences of debt issued by said company, which, if persisted in, would result in protracted litigation, and to the sacrifice or deterioration of the property of said company, and to great delay in the resumption of the regular and legitimate operation of its road; and that it was expedient that a scheme should be devised, to be assented to by the various classes of claimants upon said company, for the harmonizing and compromising their respective claims without ending the corporate existence or corporate
48 powers of said company, and without putting an end to or limit upon its corporate privileges; it was thereupon agreed between the parties thereto, that said subscribing creditors, and all creditors who should thereafter become parties thereto, should, and they did thereby transfer and set over to said Hays, Pierson & Du Puy, as assignees in trust, agents and attorneys, their said claims against said company, for the purpose

of realizing, converting, managing and controlling the same as was therein stipulated and agreed upon. It was further therein stipulated and agreed that the said company should issue a new series of bonds to the amount of $7,000,000, to be secured by a first mortgage upon the entire main line of said company, extending from Mobile, Alabama, to Columbus, Kentucky, including the chartered rights, rolling stock, machinery, depots, fixtures, real estate, &c., necessary to and used in the operation of said road, and was also to issue bonds known as preferred income and sinking fund debentures, which were to be in four series, numbered 1st, 2d, 3d and 4th series, respectively, but the same were not to have any interest coupons attached thereto, and were not to be payable absolutely, but only out of the sinking fund therein provided, and were to be registered and were only to be transferable on the books of said company in New York, and not otherwise; said debentures were to bear interest at a rate not exceeding seven per cent. per annum, which interest after the year 1878 was to be payable conditionally, that is to say, said company obligated itself on or before the 1st day of December of each year, to ascertain as nearly as possible its net earnings remaining after paying current expenses, cost of maintenance and proper repair, and the interest on said new First Mortgage Bonds, up to the 1st of September next preceding, that date being fixed as the end of the fiscal year, and in case it should be ascertained that after making the payments aforesaid there remained a residue of earnings for the year ending as aforesaid, such residue was to be applied to payments of interest on the 1st series of said debentures, and the remainder, if any, to the payment of interest on the 2d series, and the remainder to the 3d series, and the remainder if any to the fourth series—but it was expressly stipulated that in case the earnings for any one of such years shall not be adequate to the payment of seven per cent. interest for that year,

on all or either series of said debentures, then the deficiency was not to have any claim upon the net earnings of any succeeding year. And the net earnings aforesaid were only to be applicable to the payment of interest on either series of said debentures when the same amounted to one per cent., or a multiple thereof, on the total amount of the debentures belonging to such series, so that fractions in excess of one per cent. or a multiple thereof were not to be included in the interest of that year—but were to be carried to the credit of earnings for the next succeeding year. Said company further agreed to make and execute a trust deed as a security for the payment of said debentures as above set forth upon any and all lands granted to said company by any State or the United States, and also upon all lands belonging to said company, and not necessary for the operation of its railroad—and also upon the residue of the net earnings of said company as above specified.

It was therein further covenanted by said company that it would deliver said new mortgage bonds and debentures to said Hays, Pierson and Du Puy, or their successors, who in turn covenanted and agreed to deliver said new mortgage bonds and debentures to the holders of said sterling arrears of interest and substitution bonds and other evidences of debt issued by said company, subscribers to said instrument, upon the following basis: that is to say, each of said subscribers who had transferred or who should thereafter transfer as aforesaid to said Hays, Pierson and Du Puy, first or sterling mortgage bonds, or sterling interest bonds, for each one thousand dollars, or each £225 or £200, was to receive a new first mortgage bond for four hundred and forty ($440) dollars, to be taken at par, and each coupon of said first or sterling mortgage bonds, so transferred was estimated at $36, except coupons maturing November 1st, 1877, which were estimated as being worth only six dollars ($6), and for the same, and at

this valuation, new first mortgage bonds were to be issued, to each subscriber who had transferred, or should thereafter transfer as aforesaid, arrearage interest bonds at the rate of $310 of new first mortgage bonds for each $1,000 of such arrearage interest bonds, and coupons of said bonds were to be valued likewise at $36, provided the original due date of such coupon shall not have been later than November 1st, 1877, and coupons whose due date was the 1st of November, 1877, were to be valued at $6.00 each, and new First Mortgage bonds were to be issued therefor, to each subscriber who had transferred, or should thereafter transfer, as agreed upon in said instrument, substitution bonds, or coupons, at the rate of $626.00, in new First Mortgage bonds, for each $1,000 bond so transferred, and at the rate of $36.00 for each coupon, provided the original due date was not later than July 1st, 1877; which latter class of coupons were to be valued at $30.00. Respondents further show that by the terms of said scheme of reorganization each subscriber who had transferred, as aforesaid, First or Sterling Mortgage bonds, Sterling Interest bonds, Arrearage Interest bonds, or Substitution bonds, was also to receive from said Hays, Pierson and Du Puy, Trustees, &c., or their successors, in the first series of the Preferred Income and Sinking Fund debentures, the difference between the new First Mortgage bonds, so received, as aforesaid, and the principal or face of the securities so transferred by them, exclusive of interest, and estimating each bond for £225, or for £205, or for £200, as being for $1,000.

Respondents further show, that by the terms of said instrument, it was provided that the subscribers thereto transferring Second Mortgage bonds, Convertible bonds, and the other securities and evidences of debt of lower grade, issued by said company, were to receive from said Hays, Pierson and Du Puy, Trustees, &c., or their successors, the second, third and fourth series of said Preferred, Income and Sinking Fund debentures, ac-

61 cording to the rate, and in the order of priority, and upon the terms and limitations in said agreement specified, but which it is unnecessary for the purposes of this answer to set out in detail.

Respondents further show, that it was further provided in said agreement, that said mortgage bonds of the original issue of said company, and which were transferred, as aforesaid, by the holders subscribing to said agreement, should not be cancelled or destroyed, until all the holders of such bonds and securities should
62 become parties to said agreement and certain other requirements therein specified, had been complied with, but were to be kept alive and held as security for said new bonds and debentures so to be issued, and in the manner therein set forth. Respondents file herewith, marked as Exhibit No. 4, a copy of said agreement, and ask that the same may be taken and considered as a part of this answer.

Respondents further answering, show that the scheme of reorganization and adjustment contained in said
63 agreement was approved by the United States Circuit Courts for Alabama, Mississippi and Kentucky, and also by this honorable court, and the decrees of foreclosure and sale of the property and franchises of said company before that time rendered, were by orders of said court suspended, and the said scheme and plan of reorganization has progressed until the same has been almost perfected under the orders and directions of said courts, all of which will more fully appear by an inspection of the records of this honorable court in the
64 said cause of Duncan, Iselin and Wilson *vs.* The Mobile & Ohio Railroad Company, to which reference is made; that more than 99 per cent. of all the mortgage bondholders and of the owners of judgments and unsecured claims have become parties to said agreement, and have assigned their securities and evidences of debt to said committee of reorganization. And the said company have issued the bonds and debentures and made

and executed the mortgage and deed in trust contem- 65
plated and agreed to be issued and executed by the terms of said agreement. Said mortgage and said deed in trust are made to The Farmers' Loan and Trust Company of New York as Trustee, and copies of both said instruments are herewith filed, marked Exhibits Nos. 5 and 6, and have delivered the said bonds and debentures to said committee, as stipulated therein, and the latter have delivered said bonds and debentures in exchange for the securities and evidences of debt so assigned to them according to the tenor of said agree- 66
ment. Respondents show that they became subscribers and parties to said agreement of reorganization on or before February 16th, 1877, and at that time and in due form assigned their said substitution bonds and sterling or first mortgage bonds to the said Hays, Pierson and Du Puy, Trustees, &c., for the purpose of said agreement, and in return received certificates which entitled the holder to new mortgage bonds, and debentures as therein provided, which said new bonds and debentures have never been delivered in exchange therefor, and are 67
now the holders and owners of the same.

Respondents show that they entered into said agreement and transferred said substitution and sterling mortgage bonds, and received said new bonds and debentures *bona fide*, and in the full and honest belief that said substitution bonds were precisely what they purported to be on their face, that is to say, a first mortgage, superior to all other claims and incumbrances, on that part of the property, franchises, &c., of said company situated in Tennessee, and without notice or 68
knowledge of the claim of complainant and of those in like right with him as set up in the bill filed herein, and respondents are informed, believe and so charge that the foregoing is true of all the other said holders of bonds and evidences of debts issued by said company, who became parties to said agreement and participated in said scheme of reorganization by assigning their said

69 securities, and receiving new bonds or debentures as provided in said plan of reorganization.

Respondents whilst adopting, as before stated, the answer of their co-defendant the Mobile & Ohio Railroad Company, desire especially and generally to reiterate the allegations made in said answer, that the uniform and uninterrupted construction placed by the officials of said State in acting in her behalf, in their various transactions, course of conduct, and dealings with said railroad companies, to whom have been
70 loaned the bonds of said State, under the said Act of February 11th, 1852, and the acts amendatory thereof, with reference to said loan and their liability and duty thereunder, extending through a period of more than twenty-five years, was, that said lien so created and reserved as aforesaid, was solely for the benefit and security of said State, unincumbered with any trust equity or beneficial interest in favor of the holders of the State bonds so loaned to said companies, and that said bondholders had no interest direct, or indirect, in
71 said lien; but by virtue of the tenor and contract of the bonds so held by them, were to look alone to the said State for the payment of the principal and interest of the same. Respondents further show that said State, as is more particularly set forth in said answer, through various acts of her Legislature, extending over more than twenty years, both impliedly and expressly, claimed and asserted that the said lien was alone for the security and indemnity of said State, and that the latter was in no sense a Trustee for the
72 said holders of her bonds, and that they had no interest in or claim upon the property of said railroad companies covered by said lien; but were to have recourse alone upon said State for payment of their said bonds. Respondents further show that these acts of the Legislature of said State negative and repudiated any right or interest of said holders of her bonds in the lien so reserved as aforesaid by the Act

February 11, 1852, in favor of the State in many and 73
various ways—but notably:

1st. By requiring said railroad companies so receiving bonds to pay into the Bank of Tennessee, the fiscal agent of Said State, and virtually her Treasury, fifteen days in advance of the maturity of the interest on said bonds, an amount sufficient to pay said interest.

2d. By providing for a sinking fund to retire the debt 74
and extinguish the lien growing out of the loan of said bonds by said State to said companies, and expressly authorizing payments to be made to the same in *any* of the bonds of said State, and not in the identical bonds originally loaned to said company so paying, and by fixing the payment to the same at such a rate as would have reimbursed the State before the maturity of the bonds so loaned as aforesaid.

3d. By expressly reserving, in the original act author- 75
izing the issuing of said bonds, the right to enact thereafter all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issue of bonds under the provisions of said act, and, in certain contingencies therein specified, to seize the roads to whom bonds were loaned, appoint Receivers to operate the same, and apply proceeds as therein specified, and also, in certain cases therein enumerated, to sell said roads outright, in the absence of any default of said company 76
in providing for funds to pay principal and interest.

4th. By increasing, diminishing, suspending and releasing payments by said companies to said sinking fund at the will and pleasure of said State, without reference to the wishes or supposed interests of said bondholders, and by making various changes in the

77 method of keeping the same from that prescribed originally, and finally by expressly providing that payments to said sinking fund should be passed directly to the credit of the company paying. and be a release to said company from that amount due by it to the State, and, instead of providing a sum sufficient to pay the interest on the whole amount of bonds originally loaned, they should only be required to pay on the amount of bonds unpaid at the time specified.

78 5th. By increasing the amount of bonds which were under said Act of February 11, 1852, to be issued at the rate of $8,000 per mile to $10,000 per mile, and also by authorizing an increased issue for bridge purposes to the extent of many thousands of dollars, at the same time reserving a lien upon the same property as was embraced in said Act of February 11, 1852, to secure payment of such increased and additional issues.

79 6th. By issuing and loaning to nearly all of the companies which were beneficiaries under said Act of February 11, 1852, and the acts amendatory thereof, other and additional bonds for the purpose of reconstructing and rehabilitating the roads of said companies which had been run down, or had been injured and destroyed by the casualties growing out of the late civil war; said issues and loans having made during the years 1866-7-8 and 9, and amounting to many millions of dollars, and by the same acts which so au-
80 thorized the issuance of said bonds declaring, reserving and retaining a first lien or mortgage upon the same property, franchises, &c., of said companies as were embraced and included in said Act of February 11, 1852, and acts amendatory thereof, which originally authorized the issuance and loan of said bonds.

7th. By authorizing and instructing certain desig-

nated officials of said State to seize the roads and 81
properties of said companies, and to inaugurate and prosecute suits on her behalf for the purpose of selling said properties of said defaulting companies; and when, as was in divers instances the case, said roads, &c., were sold by assuming to convey a perfect, unencumbered and indefeasible title to the purchasers, and by applying the proceeds of said sales to the use and benefit of said State when paid in money, and when paid in bonds of said State by canceling the same—totally ignoring and disregarding any supposed right 82
or claim of the holders of those bonds originally loaned as aforesaid to said companies.

8th. By the terms and provisions of said Act of February 25, 1869, and of the Act of January 5, 1870, amendatory thereof.

Respondents, further answering, say, upon information and belief: That, during all the years through which the legislation aforesaid extended, although 83
said legislation and settlements, suits of foreclosure and sales thereunder, and other doings and proceedings thereunder, were open, public and widely notorious, and known to the holders of said State bonds so issued and loaned to said companies, yet no one of them ever, directly or indirectly, dissented from said legislation, or from said acts and doings thereunder; that this was the case, although said State was notoriously embarrassed financially, and, with few exceptions, had failed to pay the interest on her bonded 84
debt, or to make any provision for the same; that they never, at any time, until the bringing of the series of suits—of which this is one—in the year 1879, asserted any interest in or right to the said lien retained by said Act of February 11, 1852, by demanding of the said State that, through the machinery provided by said last-mentioned act, or acts amendatory of the

85 same, the said lien should be enforced by sequestration or sale, or by making demand of payment of the said companies to which said bonds had been loaned as aforesaid—of the interest due thereon and unpaid—nor in any other manner whatsoever. Respondents charge, upon information and belief, that said bondholders, although fully cognizant of what was being done, with reference to said lien, by said state and by said companies, and that both were dealing with and disposing of the same as though it was the exclusive
86 property of said state, and although informed of the issuance of said substitution bonds and mortgage by the said Mobile & Ohio Railroad Company, and of the fact that the same were being offered for sale by said Duncan, Iselin and Wilson, and were being purchased by innocent persons, including the respondents, Saladin and Iselin, for value, in the sincere and honest belief that the same were what they upon their face were declared to be, and although fully informed of the fact that the said agreement between the said Mobile &
87 Ohio Railroad Company, Hays & Pierson and DuPuy, and these respondents and the creditors of said company, as already set forth, had been entered into, and that the scheme of reorganization and compromise therein projected was being rapidly perfected, and that said subscribing parties thereto were materially changing the status of their claims against the said company and were releasing and yielding a part of their said claims, surrendering bonds secured by prior mortgages on said property and taking securities of a
88 lower grade much less valuable—all upon the assumption and belief, honestly entertained, that said substitution bonds were in all respects valid and a first mortgage as heretofore declared—yet they, the said holders of said state bonds, stood by apparently acquiescing in what was being done and uttering no word of warning or dissent. Respondents further say that said state bondholders have

not merely confined themselves to inaction and quiescence in the premises but that they have by many direct, positive and unequivocal acts and declarations led all parties to believe that their sole debtor was the State of Tennessee, and that they reposed alone upon her faith and honor. Respondents show in this connection that under the said Act of November 23, 1865, all of the holders of Tennessee bonds, including complainants or those through whom they claim, funded the interest which had accrued and was past due from the years 1861 to 1866 in new state bonds, amounting to more than $4,500,000, and also funded in new state bonds all past due interest under the Act passed February 24, 1870; that they also registered their bonds and funded in new state bonds, all past due interest accruing prior to January 1, 1874, under the Act of March 17, 1873. Respondent avers that the said holders of Tennessee state bonds, including complainants or those through whom they claim, were eager and active in procuring the passage of said Act and promptly funded, as aforesaid, their past due interest and had their bonds registered, and that fact stamped on each of said bonds by the proper state official, as provided in said Act; that said Act pledged the faith and credit of the state for the payment of said bonds at maturity and for the providing a sinking fund for that purpose, and for the prompt payment of interest on said bonds, as well as interest on registered bonds commencing with the interest to fall due on the 1st of July, 1874. *And it was thereby made the duty of the Treasurer of said state to set apart for that exclusive purpose so much of the state revenues as may be necessary to pay the interest on said bonds commencing with the interest falling due July* 1, 1874.

Respondents aver that the revenues of said state, coming into her treasury each year since said funding and registration under said act, were amply sufficient

93 to pay off the interest on all of said bonds, including those of complainants, as the same matured; that complainants and the other holders of said state bonds, by the terms of their contract under said act, had the legal right to compel the Treasurer, or other proper official of said state, by mandamus or other legal process, to apply said revenues of the state to the payment of the interest on said bonds, as the same matured, and that, by accepting the provisions of said act, they thereby received a new and amply sufficient security for the
94 payment of the principal and interest of their said bonds; and if they ever had any lien on the property, &c., of said railroad companies (which respondents deny), under said act of February 11, 1852, they released and surrendered it by an acceptance of the provisions of said act of March 17, 1873. But, should this Honorable Court be of the opinion contrary to respondents' belief that they are mistaken in this, they submit that complainants and their associates have another security provided by said act, and that they
95 will not be allowed in a court of equity to disturb the said property of said Mobile & Ohio Railroad Company situated in Tennessee, which is the sole security possessed by respondents, until they shall have exhausted said fund, or attempted and failed to reach the same. Respondents further show that a number of persons, holders and representatives of holders of a large amount of said State bonds, residing in the City of New York—complainants being of the number—some years prior to the bringing of this and the other
96 suits aforesaid, formed themselves into an association, having avowedly for its principal, if not its sole object, the enforcement by concerted action of the payment of the interest and principal on said bonds, by the State, or at least some compromise or part payment thereof; that this association was known as the Committee of Tennessee Bondholders; that this committee addressed itself vigorously to the task of bring-

ing about such a state of public sentiment in Tennessee as would result in a recognition by the Legislature of said bonds, and in a provision for the payment of interest upon the same, or some fair adjustment thereof; that both in and through the public press of the State and country was the necessity for such action pointed out by cogent argument and fervent appeals to the patriotism and sense of honor of the people of said State. That as a part of their programme some or all of the members of said committee requested that certain eminent gentlemen of New York City should act as arbitrators to determine what would be an equitable compromise between the State of Tennessee and her creditors, who decided that a settlement upon a basis of sixty cents upon the dollar would be equitable and just to all parties; that this committee arrived at their conclusion after consulting with a committee of the Tennessee Legislature then in session—said committee having been appointed for that purpose—upon the suggestion that said bondholders desired a conference and settlement with the State; that said Legislature, however, adjourned without doing anything in that direction. That shortly thereafter said committee or individual members thereof, acting for it or with their approval, placed themselves in correspondence with the Governor and other prominent officials of said State, and urged the desirability of having the Legislature called together into extra session, in order to effect a compromise of the State debt growing out of the issuance of said bonds, and that said Legislature was thereafter and on the 5th of December, 1877, called together in extra session to consider of said proposed compromise, and that propositions were made by complainants and their associates, claiming to be very large holders of Tennessee bonds, to settle said debt and accept new bonds at sixty cents on the dollar, with the same rate

101 of interest as was borne by the original issue of bonds; that the Legislature was not favorable to any adjustment upon that basis, and that thereupon, complainant Stevens telegraphed to said Governor, offering to take fifty instead of sixty cents, as he had originally proposed, and urging an acceptance of this proposition. Respondents further show that at the time complainants and their associates were thus engaged in attempts at compromise and settlement with said State, several of the companies to which State
102 aid had been granted under the Internal Improvement laws aforesaid had failed to accept the provisions of said act of February 23, 1869, and that complainants, or those associated with them in interest and in said association, and with their approbation and consent, repeatedly urged the managing officials of said companies to settle with the said State, as contemplated by said act, and several of them, viz., Geddes & Smith and E. D. Morgan, being then and before members of said Committee of Tennessee Bond-
103 holders, and one of them an official, as respondents are informed and believe, with the full concurrence of complainants, wrote to the Honorable James D. Porter, Governor of said State, on the 23d of February, 1877, informing him, among other things, that it was believed by some that the debtors of the State were hostile to any settlement of the State debt—which said bondholders were then urging upon the Legislature at that time in session—and in said communication used the following very significant language:

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"But to remove this cause of real or apparent antagonism between the debtors and creditors of the State, and also to remove which is of real and great importance an obstacle which is calculated to prevent, or at least hinder the people of Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the State and

place it upon a solid basis, we would respectfully suggest to your Excellency that the debtors of the State be required in a reasonable time, say by or before July 1, 1877, to *pay off every obligation due from them to the State, as now they may do, after which time only such advances as were specifically made to each to be receivable in payment or cash, this to apply to principal and interest.* We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the *creditors* of the State would regard such a step as one taken in the right direction."

Respondents aver that the only creditors of the State at that time or subsequently, with unimportant exceptions, were the holders of her bonds, and that nearly the entire bonded debt then outstanding consisted of bonds issued and loaned to railroad companies under said Internal Improvement Laws, and those bonds into which past due interest had been funded as aforesaid; and that the only debtors of the State of any magnitude were those of said companies which had received, as aforesaid, State bonds and had failed to pay the State the debt so incurred by substitution or otherwise, as they could do under said Act of February 25, 1869, and that it was to these companies alone that reference was made when the debtors of the State are spoken of in the above correspondence.

Respondents are informed and charge, that in divers other ways, not now necessary to be enumerated in detail, complainant and the other holders of Tennessee State bonds brought influences to bear upon said companies so receiving State aid to induce and even force them to accept the provisions of said act. Their reason for this course was obvious. The total bonded debt of the State at or about the time said act was passed was nearly, if not quite, $40,000,000. And in the then disorganized and impoverished condition of said State, the

109 magnitude and shape of said debt was such as to dishearten the people, it being beyond their present or prospective ability to pay interest on the same, much less provide for a fund for its ultimate extinguishment. And to make the situation more discouraging, with, perhaps, one exception, the said companies, to which bonds had been loaned under the Internal Improvement Laws, were behind largely in thir payments to meet interest on the bonds so loaned—and years in default to the said sinking fund, and besides, were so dilapidated
110 and ruinously out of repair as to be a positive burthen and charge upon the State instead of yielding a profit, when she attempted through receivers under said acts to operate them. The only possible avenue of escape for the State from bankruptcy and consequent ruin to herself and her creditors was some such master-stroke of financial policy as was fallen upon by the legislation of 1869–70, the leading feature of which was to sell outright all railroads hopelessly insolvent, and procure a settlement and payment through the aforesaid pro-
111 cess of subststution or otherwise of the sum due the State on account of said loans. By means of this legislation—through sales of roads and substitutions—the said State debt was reduced more than $21,000,000, and with prudent management was within the control of said State. And, as a result, State bonds appreciated largely in value and promised golden returns to their holders, who were much pleased at the improved outlook, and hailed with satisfaction the announcement of settlement by each company when made, and urged in-
112 to line those companies which seemed to them slow to take advantage of said act.

Respondents say that in view of the premises, and of the matters and things contained in said answer of the Mobile & Ohio Railroad Company, and by them adopted as their answer as before said—

1st. That complainant and the other holders of bonds

loaned said company under said Internal Improvement 113
Laws never had, by virtue of the terms and provisions of the same, or otherwise, any lien, mortgage or claim of any kind or character upon the road or other property of said company ; that whilst a lien was reserved upon the same by said Act of February 11, 1852, and the acts amendatory thereof, it was alone for the benefit and security of the State, not coupled with any trust or equity in favor of said bondholders.

2d. Should the court be of a different opinion re- 114
spondents submit that by the express terms of the twelfth section of said act, said lien was made defeasible, and that the said subsequent legislation did defeat and destroy the same, and that it now, by reason of such legislation, has no longer any existence, or said bondholders any rights thereunder.

3d. That should this Honorable Court be of the opinion that such lien did exist in favor of said bondholders, including complainants, and did remain in full force, 115
after said Acts of 1869-70, unimpaired by any legislative attempts to destroy it, still respondents submit, that by reason of the laches, inaction, and acquiescence of the complainants and the other of said bondholders, they have so slept upon their rights, if they ever had any, as to make it against equity and good conscience to allow them now to set up, establish and enforce such lien

4th. That by reason of the action of complainants and their associates, and of those through whom the 116
said bonds were received, in funding their past due coupons and registering their bonds under said Funding Acts of 1865 and 1873, and accepting the terms, benefits, securities, and provisions of said acts, they have for ever waived, released, and surrendered any rights or liens which may have existed in their favor by virtue of and under said act of February 11, 1852.

117 5th. That in view of the fact that complainants and their associates, and those through whom they claim title, have, as before stated, not only tacitly acquiesced and approved of the legislation aforesaid, wherein the State asserted her sole right to said lien, and assumed to, and did dispose of the same, and have, without murmur or warning, seen innocent persons, including those respondents, in good faith and upon the assumption of the right by said State so to act with reference to said lien and the property embraced in
118 the same, part with their money, surrender valuable securities, and otherwise incur onerous obligations to their prejudice, but, as herein set forth, and otherwise actively encouraged, counseled, and constrained said companies, including the Mobile & Ohio Railway Company, to make the aforesaid settlement with the State, and to issue and sell, as already stated, said substitution bonds to innocent purchasers for value—they and each of them are equitably estopped and forbidden from now attempting to assert or maintain their suit
119 in this behalf, and should be repelled from a court of conscience.

Respondents further answering, show that the said Pierson has departed this life, and that said DuPuy is now a citizen of New York.

Respondents further show that said W. B. Duncan, Adrian Iselin, and R. T. Wilson, Trustees in said substitution mortgage, and said William H. Hays and T.
120 H. DuPuy, sole survivors of said Committee of Reorganization, and said Farmers' Loan and Trust Company, have each and all been advised by respondents of the pendency of this suit, and have been requested to intervene, and have themselves made parties, and protect and defend the rights of respondents and those in like interest with them, but they, and each of them, have declined to act in the premises, being advised,

as they allege, that inasmuch as they are citizens of 121
New York, as are also the complainants herein, they cannot do so, and for that reason these respondents appear in their own names, and on their own behalf, and in behalf of those in like right with them, as heretofore stated and set forth.

And now, having fully answered, these respondents pray that they may be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.
122

WRIGHT, FALKES & WRIGHT,
Solicitors for Respondents.

123

124

EX. No. 1, 249
To ILLINOIS CENTRAL R. R. Co., ANSWER.

NOTICE TO TENNESSEE BONDHOLDERS.

BANK OF COMMERCE BUILDING, ROOM 8.

NEW YORK, Jan. 19th, 1878.

At a meeting of the committee of Tennessee bondholders—Present, Eugene Kelly (chairman), Peter Geddes, J. G. K. Duer, J. T. Terry and Dr. R. S. Moran, it was

Resolved—That a written copy of the resolution 250
passed at the meeting of Tennessee bondholders, held January 16th, 1878, be sent to Governor Porter, and that copies of the same be also printed for general distribution. It was also

Resolved—That all holders of Tennessee bonds are requested to communicate with Mr. Peter Geddes, Bank of Commerce Building, room 8, New York, one of said committee.

C. AMORY STEVENS,
Secretary. 251

P. S.—It is necessary that all Tennessee bondholders send in their names for record as soon as possible.

CALL FOR MEETING OF TENNESSEE BONDHOLDERS.

NOTICE.

The holders of the State of Tennessee bonds are earnestly requested to meet at the office of John B. Manning No 14 Wall street on Wednesday January, 16th, at 12 o'clock. 252

E. D. MORGAN & CO.,
BROWN BROTHERS & CO.,
EUGENE KELLY,
GEDDES & SMITH,
JAMES G. KING'S SONS,
A. H. POMEROY,
GEORGE W. STANTON,
C. AMORY STEVENS.

253 At a meeting of bondholders of the State of Tennessee, held pursuant to the above call, the following preamble and resolutions were adopted :—

Whereas, on the 8th day of March, 1877, at a meeting between a committee of five members of the Tennessee Legislature (of which Col. John H. Savage was chairman), and a committee of arbitration (of which Mr. George S. Coe, was chairman), to whom had been referred the question of a fair and equitable adjustment
254 between the Southern Statef in default and their bondholders, the debt of the States of Tennessee was fully discussed, with a view of ascertaining and determining what a fair and equitable adjustment would be ; and

Whereas, at the conclusion of the conference between the committee of the Tennessee Legislature and the committee of arbiters, the committee of arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate
255 of sixty per cent. of the total amount of the debt and interest ; the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State ; and

Whereas, The Session of the Legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was no time to enact a law to give it effect ; and

256 *Whereas*, it was very generally understood that an extra Session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the committee of arbitration and to enact a law to fully carry it out, the holders of a very large amount of bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award,

and the Governor did thereafter convene the Legislature in extra Session to consider said proposition; and

Whereas, during the sitting of the Legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the committee of the Legislature and the committee of arbitration, and awarded by the latter committee, and agreed to by the bondholders, was prejudical to the interests of the State of Tennessee, and her creditors, in so far as it has delayed a settlement; and

Whereas, the bondholders of Tennessee had neither an agent nor any other person to represent them before the Legislature, but confided in the Legislature, and fully expected that the Senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

Resolved,—That efforts made by any persons who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville, that a settlement could be effected with the bondholders upon a lower basis than that proposed by the committee of arbiters, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

Resolved,—That while we deplore the attitude assumed by the Legislature, while assembled at Nashville in December, towards the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders, or their representatives.

261 *Resolved*,—That we have an abiding belief that th people of the great State of Tennessee will not by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them, the effect of which will be to paralyze the prosperity of the State, subvert its best interests, and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

262 *Resolved*,—That the people of Tennessee be urged to adopt such legislation as will upwold the honor the State, and evince proper regard for the high integrity which has hitherto characterized her citizens.

Resolved,—That a committee of five be appointed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be chairman—to take such action as, in their judgment, may be for the interest of
263 the bondholders, but with the understanding that no settlement less favorable than the award of the committee of arbitration be accepted.

EXHIBIT No. 2.

To answer of Illinois Central R. R. Co.

Office of

COMMITTEE OF TENNESSEE BONDHOLDERS,
264

No. 31 Nassau Street,

P. O. Box 936. New York, May 17, 1879.

To the holders of Tennessee Bonds:

In our last circular we informed you that the Committee was considering the best means for enforcing our first mortgage liens against the railroads in Tennessee.

After full deliberation, with advice of counsel, and with 265
the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Savings Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we have decided to adopt the suits lately instituted by Mr. C. Amory Stevens. Prompt action on the part of the bondholders will enable us to bring these suits to trial during the ensuing summer. 266

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the State, S. Watson, "agent for the State of Tennessee," addressed the following argument to the public, which was printed in pamphlet form in 1868:

267

"The important question for a bondholder now is, "What security have I for the payment of the principal "and interest of my bond? The State debt proper is "only about four millions. The railroads and all their "rolling stock are mortgaged to the State to secure the "*payment of bonds loaned*. This mortgage as bond- "holders must know, enures to their benefit. For the "payment of twenty-nine million bonds, which will be "the entire amount of bonds issued by the roads, "including those that may be issued under the recent 268
"Act of the Legislature, *the bondholders have as* "*security* roads, which, when completed, will be "nearly two thousand miles in length, and which will "be worth fully seventy million dollars. In addition "to that, they have the whole resources of the State "solemnly pledged to them."

269 Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Governor Brownlow, then our chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

"The State in point of honor and fact, holds the lien "in a fiduciary capacity. She holds it *in trust* for "the benefit of the bond-holders. She honorably has "no right to abandon it or surrender it to the Com- "panies. She ought not to prove faithless in this
270 "*trust*, but maintain and execute it as the bondholders "understood it, and as the people of the State under- "stood it. The bondholders are interested in these "resources to pay the bonds they hold, and the people "are interested in them to see that they are not to be "taxed to pay interest or principal of bonds for which "the railroads are pledged by the terms of the law."

The assurance of our rightful legal claims against the railroads is strongly fortified by the following facts:

In April, 1878, the Committee addressed a circular to
271 the bond-holders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on appeal before the Supreme Court of the United States. In that suit, the question whether or not the holders of Tennessee bonds had a first mortgage lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the Railroad Company as well as by our counsel, and the Court took the case under advisement. Sometime after while we were confidently
272 awaiting a decision in our favor, we were surprised to learn that the Railroad Company had settled the case with the party to the record in that suit—that stipulations had been filed in the office of the Clerk of the Supreme Court—that copies had been sent to the several Judges of the Supreme Court, and in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case.

As we were not actual parties to that cause, we could 273
not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their own defeat. Otherwise they would have gladly welcomed a decision which would have relieved their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompany- 274
ing opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to determine whether or not to embark in a litigation against the railroads. A letter signed by Messrs. Evarts, Southmayd and Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the Railroads. That letter bases its conclusions on the Min-
nesota case, which, we are informed by Mr. O'Con- 275
or, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to add that Mr. Southmayd, of the above firm, urged, before the Supreme Court, that same decision in the Minnesota case as a precedent in favor of his client ; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated.

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount of bonds outstanding against each road. 276

East Tennessee, Virginia and Georgia Railroad, leased lines and branches :

East Tennessee and Georgia Railroad,	$ 614,000
East Tennessee and Virginia Railroad,	1,218,000
Memphis and Charleston Railroad,	830,000

277	Cincinnati, Cumberland Gap and Charleston Railroad,	350,000
	East Tennessee and Western North Carolina Railroad,	34,000
	Total,	$3,036,000
	Louisville and Nashville Railroad Company, and purchased and leased lines:	
	Main line	$ 298,000
278	Memphis, Clarksville and Louisville Railroad,	791,000
	Memphis and Ohio Railroad.	1,176,000
	Tennessee and Alabama Railroad, / Central Southern Railroad, } Nashville and Decatur Railroad,	468,000
		302,000
	St. Louis and South Eastern Railroad Company on account of Edgefield and Kentucky Railroad,	645,000
279	Total,	$3,740,000
	Nashville, Chattanooga and St. Louis Lines:	
	Nashville and Chattanooga,	$ 774,000
	Nashville and North Western,	1,185,000
	Winchester and Alabama,	457,000
	McMinnville and Manchester,	356,000
280	Total,	$2,312,000
	Mobile and Ohio Railroad,	953,000
	New Orleans, St. Louis and Chicago Railroad on account Mississippi Central and Tennessee Railroad,	480,000

Knoxville and Ohio Railroad Company on account of Knoxville and Kentucky Railroad,	514,000
The above amounts and some issues to smaller roads make an aggregate of railroads issues made by the State of Tennessee, and which are still outstanding	11,647,000
On which there is accrued 23 per cent. interest,	2,678,810
Total due,	$14,325,710

Bondholders will please note that "New" bonds, issued to Tennessee Railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the funding acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

The members of the Committee are owners to a large amount, of Bonds that are not liens on the railroads, which they do not propose to fund into the 50 and 4 per cent. Bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the New 4 per cent. Compromise Bonds is already questioned in Tennessee, for want of sufficient acceptances to authorize the submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien originally intended for their security. A like attempt in the State of Indiana in the case of the Wabash and Erie Canal was also unsuccessful, and the lien decided in favor of the bondholders.

285 Bondholders wishing to secure the benefits resulting from this litigation can do so on the following conditions; to wit, by depositing with the Committee five dollars per lien bond, in cash, and one past due coupon from each bond of that description. This will be required to defray the necessary costs and expenses of the litigation. In no event will the bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the
286 Committee, after all expenditures have been provided for, the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the Committee. A Certificate will be issued to each assenting bond, entitling it to any and all advantages resulting from these legal proceedings, and specifying the railroad company bond for the payment of the bond. An arrangement for calling these Certificate Bonds for dealings in them on the New York
287 Stock Exchange will be made.

When it is considered that the enforcement of these liens should make the great mass of the Internal Improvement Bonds worth par and accrued interest, or 123 per cent., the advisibility of the course which we have adopted cannot be reasonaby doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds, is requested before June 10th. Upon receipt by the Committee of
288 the assets of a sufficient number of bonds, the holders will be notified of the issue of the Certificates to be attached to the lien bonds. We propose to engage as Counsel Chas. O'Conor and E. L. Andrews, of New York, and Geo. Hoadly, of Cincinnati, to be assisted

by competent counsel at Memphis, Nashville, Knoxville and Louisville. 289

Committee of Tennessee Bond-holders.

EUGENE KELLY,
Of Eugene Kelly & Co.
JOHN T. TERRY,
Of E. D. Morgan & Co.
JAS. G. K. DUER,
Of James G. King's Sons.
PETER GEDDES,
Of Geddes & Smith,
R. S. MORGAN,
Of 107 East 29th St., N. Y. 290

C. AMORY STEVENS,
Treasurer.
THOMAS G. ROBINSON,
Secretary.

Exhibit No. 3, to answer,

of Illinois Central Railroad Company.

This Indenture, made this 8th day of November, 291
Anno Domini one thousand eight hundred and seventy-seven, between the Chicago, St. Louis and New Orleans Railroad Company, of the first part; the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Mississippi Railroad Company of the third part, and Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Tennessee, and Lewis V. F. Randolph of the City of New York in the State of New York, Trustees, of the fourth part: 292

Whereas, a certain corporation known as the New Orleans, Jackson and Great Northern Railroad Company, organized under the laws of the States of Louisiana and Mississippi, heretofore owned and operated a certain railroad, extending from the city of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, together with a branch thereof

known as the Kosciusko Branch from a point at or near Durant in the State of Mississippi to Kosciusko in the said State of Mississippi, and with the right to construct and operate certain other branches and extensions, with the depot grounds, buildings, machinery and other property to said railroad appertaining, being part of the railroad and property hereby intended to be mortgaged and conveyed;

And whereas, the said New Orleans, Jackson and Great Northern Railroad Company, on or about the twelfth day of June, 1856 mortgaged and conveyed in trust to one James D. Denegre its road aforesaid, made and to be made, from the city of New Orleans in the State of Louisiana to Canton in the State of Mississippi, with the appurtenances, to secure the payment of certain of its corporate bonds to the extent of three millions of dollars;

And whereas, certain of such bonds were afterwards issued under said mortgage, two thousand nine hundred and forty-one of which are now outstanding and unpaid, amounting to two millions nine hundred and forty-one thousand ($2,941,000) dollars;

And whereas, subsequently to the making of said first mortgage, to wit: on the first day of October, 1860, the said New Orleans, Jackson and Great Northern Railroad Company, for the purpose of securing the payment of an additional and subsequent issue of its corporate bonds, to a farther amount, not exceeding three millions of dollars, did also mortgage and convey in trust to the said James D. Denegre its line of road, made and to be made, from the city of New Orleans to Canton in the State of Mississippi, and from Canton to Aberdeen in said State of Mississippi, together with the appurtenances;

And whereas, certain of such bonds were afterwards issued under said second mortgage, fifteen hundred of which are now outstanding and unpaid, amounting to one million five hundred thousand ($1,500,000) dollars;

And whereas, afterwards the said New Orleans, Jack- 297
son and Great Northern Railroad Company failed to pay the coupons or interest warrants upon said first and second mortgages, and certain of the said coupons, with all liens, rights and equities attaching thereto under said mortgages, were purchased by third parties, to the amount of three hundred and forty thousand ($340,000) dollars of such coupons due and unpaid upon the said first mortgage, and of one hundred and sixty thousand ($160,000) dollars of such coupons due and unpaid upon the said second mortgage, of said 298
New Orleans, Jackson and Great Northern Railroad Company;

And whereas, the said New Orleans, Jackson and Northern Railroad Company, party hereto of the second part, on the fifteenth day of August, 1877, made an issue of its corporate bonds, known as matured coupon bonds, to the extent of five hundred thousand dollars, to provide for the postponement of the payment of the said three hundred and forty thousand dollars ($340,000) coupons due and unpaid upon the 299
first mortgage of the New Orleans, Jackson and Great Northern Railroad Company, and of the said one hundred and sixty thousand dollars ($160,000) coupons due and unpaid upon the second mortgage of the said New Orleans, Jackson and Great Northern Railroad Company; and to further secure said matured coupon bonds, did also mortgage and convey in trust to William H. Gebhard and Lewis V. F. Randolph, both of the city of New York, its line of road, made and to be made, from the city of New Orleans to Canton in the 300
state of Mississippi;

And whereas, all of such coupons are still unpaid, and said Matured Coupon Bonds are now outstanding, to said amount of five hundred thousand dollars;

And whereas, a certain corporation known and designated as the Mississippi Central Railroad Company was chartered and incorporated by the Legislature of

the state of Mississippi, by an act passed on the tenth day of March, 1852, for the purpose of building and operating a railroad from the town of Canton, heretofore mentioned, in the state of Mississippi, to the north line of said state, and said corporation proceeded in the construction of said railroad ;

And whereas, afterwards, a certain other railroad corporation, known and designated as the Mississippi Central and Tennessee Railroad Company, was chartered and incorporated by an act of the Legislature of Tennessee, passed on the thirtieth day of November, 1853, and was authorized by said act to consolidate and form one corporation with the Mississippi Central Railroad Company, hereinbefore mentioned ;

And whereas, the said state of Tennessee, under and by virtue of its General Internal Improvement Laws, and of other acts amendatory thereof and supplementary thereto, theretofore passed and then in full force, loaned to the said Mississippi Central and Tennessee Railroad Company, or advanced for its benefit Bonds of the said state of Tennessee to the aggregate amount of five hundred and seventy-four thousand ($574,000) dollars, by virtue of which Bonds and upon the issuance thereof under and pursuant to the statutes authorizing such issuance of Bonds, the state of Tennessee became invested, without deed from the said railroad Company, with a lien in the nature of a mortgage upon the entire Road built or to built by said corporation in the state of Tennessee, with all its equipments and appurtenances, prior to any mortgage made or to be made by the said corporation, as security to indemnity and save harmless the said state, on account of the issuance and for the payment of the principal and interest of its said Bonds so issued to said corporation ;

And Whereas, afterwards and in pursuance of certain acts of the Legislatures of the states of Mississippi, Tennessee and Kentucky, the said Mississippi Central and Tennessee Railroad Company and the said

Mississippi Central Railroad Company were consoli- 305
dated and made into one corporation, under the name of the Mississippi Central Railroad Company, by the agreement and consent of the Stockholders thereof, and were authorized to continue and complete the construction of the Railroad from Canton in the state of Mississippi aforesaid, through the states of Tennessee and Kentucky, to a point on the Ohio River opposite to Cairo in Illinois, and to operate the same, and the said corporation, thereafter known as the Mississippi Central Railroad Company, did proceed to construct and 306
to operate said railroad;

And whereas, under and by virtue of the acts aforesaid, and certain other acts of the Legislature of the state of Tennessee, certain other bonds of said state to the amount of $550,000, were issued to the said Mississippi Central Railroad Company, for the purpose of aiding in the construction and completion of the said Road in the State of Tennessee, and previous to the construction and completion thereof, and under and by virtue of the General Improvement Laws, and the acts 307
amendatory thereof and supplementary thereto, pursuant to which said Bonds were issued, a lien was reserved to the said State upon the entire Road in the State of Tennessee— with all its superstructure, equipments and appurtenances, and all property owned by the Company, aud all depots and stations, and assets attached thereto, lying within the limits of said State, in the nature of a mortgage lien, without deed, prior to the lien of any mortgage executed or to be executed by the said Company, to indemnify and save harmless the 308
said State of Tennessee, for the issuance and against the payment of the principal and interest of the said last mentioned amount of five hundred and fifty thousand dollars of its Bonds, so as aforesaid issued to or for the benefit of the said Mississippi Central Railroad Company;

And whereas, said Mississippi Central Railroad

309 Company having been unable to pay and re-imburse to the said State of Tennessee, a certain amount of the interest which had accrued, and which the State had paid upon its Bonds so as aforesaid issued to the Missisippi Central and Tennessee Railroad Company, certain acts were passed by the Legislature of the State of Tennessee, by which the balance due from the Mississippi Central Railroad Company for such interest having been paid by the said State of Tennessee by issuing other of its Bonds, was charged as principal, and in all respects
310 the said State was entitled by virtue of the payment thereof, and the issuance of said Bonds therefor, to the same rights and liens for the same which were created by the acts authorizing the original issue of Bonds to said Railroad Companies; which interest, so converted into principal, and for which the said State of Tennessee became and is entitled to a like first lien upon the Railroad and property of the Mississippi Central Railroad Company within said State, amounts to seventy-five thousand one hundred and eighty ($75,180) dollars;

311 And whereas, by virtue of the payments or advances aforesaid, the State of Tennessee and its assigns, as hereinafter mentioned, became entitled to and does hold a first and paramount lien in the nature of a first mortgage upon all the property which was of the said Mississippi Central Railroad Company, so called after the consolidation aforesaid, within the said State of Tennessee, to the extent and amount of one million one hundred and ninety-nine thousand one hundred and eighty ($1,199,180) dollars besides interest;

312 And whereas, by an Act of the Legislature of said State of Tennessee, passed on the twenty-fifth day of February, 1869, and by other acts amendatory thereof and supplementary thereto, it was enacted, among other things, that the respective Railroad Companies, or either of them that had created indebtedness to the said State, were authorized to repay any amount of the principal of such indebtedness in the Bonds of the

State, and that any such Railroad Company repaying 313
any such indebtedness, might issue Bonds to an equal amount with the Bonds of the State paid and delivered up as thereby provided, which said Bonds so issued in lieu of any equal amount of said State Bonds, should be certified by the Comptroller of said State, and should be and possess a lien *pro rata* in amount and of equal validity and effect with the State indebtedness upon such Railroad, and all its property within said State of Tennessee; and further, that any person or persons, with the consent and approbation of any Rail- 314
road Company which should be indebted to the State of Tennessee, and upon whose property the State of Tennessee might hold a lien, might pay the said State debt, so far as the State is concerned, in the Bonds of the State, or any couponsof Bonds, at par, and the person or persons so paying the debt of such Railroad Company, with the consent of such Company, should be entitled to have and hold all the lien or liens which the State of Tennessee had or has, upon said Railroad or its property, and the same right and power to en- 315
force the same which the State of Tennessee had;

And whereas, in and by a Decree of the Circuit Court of the United States, for the District of Tennessee, made and entered at Memphis, on the sixth day of January, 1877, in a suit in Chancery commenced by the Trustees of the consolidated mortgage of the Mississippi Central Railroad Company hereinafter mentioned, for the foreclosure of said mortgage, and for authority and direction to sell and convey the Railroad and franchises of the said Mississippi Central Railroad Company, in sat- 316
isfaction of said consolidated mortgage, it was by the said Court ordered, adjudged, and decreed that the said Trustees and their assigns are entitled, as representing the said Mississippi Central Railroad Company, to settle the claim and take and receive a transfer of the lien of the State of Tennessee;

And whereas, the said Chicago, St. Louis and New

317 Orleans Railroad Company, has become the assignee and grantee of said Trustees in said Decree named, and of all their rights and privileges in that behalf, and also the successor as hereinafter stated of said corporation known as the Mississippi Central Railroad Company, and of all its powers, rights, privileges, and franchises, with the right in case of payment of said Tennessee Bonds to issue and substitute its own bonds with all the liens and rights held by the State of Tennessee;

318 And whereas, the said party of the first part by virtue of the premises, is invested with the rights, powers, faculties and property of the Trustees aforesaid, under said deed of trust, and the decrees of the said Court above mentioned, and also possessed of the property described in said deed and decree subject to the mortgages and liens thereon, and by reason thereof is interested to settle with the State of Tennessee the debt created by the advance of its said Bonds in the manner authorized by said State; and, in order to maintain
319 and continue the lien created by the acts aforesaid, and reserved and held by the State of Tennesse on said property within said State, so as to enable said Company to effect such settlement, the said Chicago, St. Louis and New Orleans Railroad Company, by Resolution of its Board of Directors, duly consented, and has filed such consent, executed under its corporate seal, in the office of the Treasurer of said State of Tennessee, that the said parties of the fourth part,—as Trustees for the Bonds to be issued in substitution for
320 said Tennessee State Bonds as hereinafter set forth, or the purchasers and holders of such Bonds,—may make payment of such State Bonds to the State of Tennessee, according to said Statutes, and may receive agreeably to the same, a transfer of the lien of said State, and so become invested as authorized by said acts, with the first lien upon all said Railroad and property in the State of Tennessee, heretofore held by said State as

aforesaid, and have and hold all the liens of said State, 321
and all right and power to enforce the same which the State of Tennessee has or had so that the holders of said Bonds and the said Trustees in their behalf, shall be placed in the same position in all respects and have all the rights, and the same power to enforce the same, which the State of Tennessee has or had before such transfer;

And whereas, the said Mississippi Central Railroad Company, for the purpose of improving and completing its Line of Railroad, on or about the first day of 322
November, 1854, made and executed a mortgage, or deed of trust to Charles Butler, Azariah C. Flagg and Jacob Thompson, to secure the payment of its corporate Bonds to an amount not to exceed one million three hundred and fifty thousand ($1,350,000) dollars, whereby it mortgaged and conveyed all its Railroad constructed, or to be constructed, in the State of Mississippi, with its property and appurtenances;

And whereas, Bonds were issued under said Mortgage, and are now outstanding and unpaid to an 323
amount not precisely and accurately known, but not exceeding nine hundred and ninety two thousand $992,000) dollars;

And whereas, subsequently to the making and execution of said first mortgage, to wit, on the first day of November, 1865, the said Mississippi Central Railroad Company, made and executed a second mortgage or deed of trust to Jacob S. Rogers, M. P. Mathison and William L. Sharkey, for the purpose of securing the payment of an additional issue of its corporate Bonds, 324
to an amount not to exceed two millions ($2,000,000, of dollars;

And whereas, Bonds have been issued under said second mortgage, and are now outstanding to an amount which is not definitely and accurately known and ascertained, but which does not exceed one million

nine hundred and ninety-seven thousand ($1,997,000 dollars;)

And whereas, afterwards the said Mississippi Central Railroad Company failed to pay certain coupons for interest upon the second mortgage aforesaid, and certain of said coupons were purchased and are now held by third parties, and the holders of certain other of said coupons agreed to extend the time for payment thereof, for which agreement of extension and for the preservation of which rights, certain scrip was issued by said Mississippi Central Railroad Company, which said coupons and scrip and other debts alleged to be liens upon so much of the railroad and property of such corporation as is covered by said second mortgage, amount in all to not more than one million two hundred and twenty one thousand ($1,221,000), the precise total thereof not being accurately or definitely known;

And whereas, afterwards, the New Orleans, Jackson and, Great Northern Railroad Company, hereinbefore mentioned, made and executed a certain other mortgage or deed of trust, being a consolidated mortgage upon its entire railroad and property, under which certain bonds were issued; and the said Railroad Company having made default in payment of interest upon its said last mentioned bonds, and thereupon the principal thereof, by virtue of the terms and conditions thereof, and of the mortgage or deed of trust securing the same, having become absolutely and entirely due and payable, such proceedings were had for the foreclosure of said mortgage, that the railroad property, rights and franchises of the said New Orleans, Jackson and Great Northern Railroad Company, were afterwards sold under and by virtue of the power in said mortgage or deed of trust contained, and of a decree in that behalf rendered by the Circuit Court of the United States for the District of Louisiana, and purchased by

and on behalf of certain holders of the bonds of said 329
Company, issued under said consolidated mortgage;

And whereas, afterwards, the said bondholders and purchasers, under and by virtue of statutes of the states of Mississippi and Louisiana, did organize and incorporate themselves by the corporate name and title of the New Orleans, Jackson and Northern Railroad Company, and received a deed and transfer of said Railroad, and became the owners under and according to the statutes aforesaid, of all the rights, franchises, railroad, right of way, superstructure and other property 330
which had been of the New Orleans, Jackson and Great Northern Railroad Company, with all privileges and immunities appertaining to the property or franchises so sold and purchased, and all powers and franchises of said Company in as full and complete manner as the said New Orleans, Jackson and Great Northern Railroad Company was entitled to the same by law, and as fully and perfectly as if the said New Orleans, Jackson and Northern Railroad Company had been granted a charter of incorporation in the very words of the act 331
or acts under which the New Orleans, Jackson and Great Northern Railroad Company existed, owned and operated its said Railroad, and held and exercised its rights, privileges and franchises;

And whereas, also, the said Mississippi Central Railroad Company, hereinbefore mentioned, for the purpose of completing and extending its railroad to the Ohio River, made and executed a certain consolidated mortgage or deed of trust on or about the first day of May, one thousand eight hundred and 332
seventy-two, under which consolidated mortgage or deed of trust, certain bonds or obligations of the said Mississippi Central Railroad Company were issued.

And whereas, the said Mississippi Central Railroad Company afterwards failed and made default in the payment of its coupons for interest upon said consolidated mortgage bonds; and thereafter, according to the

provisions of said bonds, and of said mortgage or deed of trust securing the same, such proceedings were had that under and by virtue of he power created and conferred by the said mortgage or deed of trust, and in pursuance of decrees rendered in the Circuit Courts of the United States, in the Districts of Tennessee, Mississippi and Kentucky, all the property described in said decrees, and in the deed of trust aforesaid, being the railroad of the said Mississippi Central Railroad Company, extending from Canton in the State of Missisippi, through the States of Mississippi, Tennessee and Kentucky, to a point on the Ohio River opposite Cairo, with all rights and appurtenances thereto belong, and all the franchises, rights and privileges of the said corporation were sold by the trustees in said mortgage or deed of trust mentioned, under the direction of a Master appointed by the said Court, and purchased by certain holders of the bonds issued under the said mortgage ;

And whereas, afterwards the said bondholders and purchasers, under and in pursuance of acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, organized and became incorporated for the purpose of holding, owning and operating the said Railroad under the name, title and designation of the Central Mississippi Railroad Company, and by virtue of the said acts of the Legislature aforesaid, and of deeds and conveyances, became, and were invested with the absolute title to said railroad and property, real and personal, and the same right to operate the said railroad in the said States, as the Mississippi Central Railroad had, and with all rights, privileges and immunities appertaining to the property and franchises so sold and purchased, and granted and conveyed to them, as fully and completely as the said Mississippi Central Railroad Company was, or had been, and with all the rights, privileges, immunities and franchises held by the said Mississippi Central Rail-

road Company, by or under any acts of the Legislatures 337
of the States aforesaid, as fully and perfectly as if the said Central Mississippi Railroad Company had been granted a charter of incorporation in the very words of the acts under which the Mississippi Central Railroad Company had existed, and claimed and exercised such powers and privileges ;

And whereas, for the better and more convenient operation of the said railroads, and the protection of the parties interested therein, and in the bonds secured by said prior mortgages thereon, and in order to form one 338
continuous line of railway from the city of New Orleans aforesaid, to the Ohio River opposite the terminus of the Illinois Central Railroad at Cairo, under a single control and ownership, it was determined and agreed to consolidate and unite the said two railroad companies known as the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company, which had so as aforesaid become the owners of the said two railroads, together constituting such continuous line from the city of New Orleans to 339
the Ohio River ;

And whereas, an agreement for such consolidation, dated the seventh day of November, A. D. 1877, has been duly executed by the said two corporations, and ratified and assented to by the stockholders thereof, (and has become valid, final and effectual in all the States in which the same is authorized and permitted by the statutes thereof, and is intended to be perfected, ratified and confirmed in all the States through which the said railroad passes) in order that the said two cor- 340
porations may become merged and consolidated in the corporation known as the Chicago, St. Louis and New Orleans Railroad Company, the party hereto of the first part ;

And whereas, by virtue of such agreement of consolidation, the corporation, party of the first part to these presents, and known as the Chicago, St. Louis

and New Orleans Railroad Company, a corporation formed by the union and consolidation of the parties of the second and third parts hereto, is intended to own and operate the railroad so as aforesaid extending from the City of New Orleans, to the Ohio river opposite Cairo, with all branches and extensions thereof, made or to be made, and with all the appurtenances, franchises and rights of way appertaining thereto, which were of the said two corporations so consolidating, or which heretofore belonged to the corporations hereinbefore mentioned, known as the New Orleans, Jackson and Great Northern Railroad and the Mississippi Central Railroad Companies;

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company, and the parties interested in the said line of railroad, have been advised and have determined that it is expedient and desirable to consolidate and provide for the existing liens upon the said line of road, or the several portions thereof hereinbefore recited, and to provide in addition the means for continuing and completing, and further equipping and perfecting such line of railroad between New Orleans and the Ohio river as aforesaid, and for that purpose the directors of said Chicago, St. Louis and New Orleans Railroad Company, at a meeting held on the 8th day of November one thousand eight hundred and seventy-seven, did pass certain resolutions of the tenor and effect following:

Resolved, That the President and Treasurer of this company be authorized to execute from time to time, as shall be required to effectuate the purposes of these resolutions, thirteen thousand bonds of this company, to be numbered consecutively from number one to number thirteen thousand inclusive, each bond to be for one thousand dollars, payable on the first day of November, one thousand eight hundred and ninety-seven, bearing interest at the rate of seven per cent. per annum, payable semi-annually at the office of the com-

pany in the City of New York, and the inteerst and 345
principal payable in lawful money of the United States of America; that the president be authorized and instructed to secure the payment of said bonds and interest thereon by a deed of mortgage, and for that purpose to execute and affix the seal of this corporation, and his signature as president, to a mortgage or deed of trust of the railroad and franchises of this company, including all its personal and real estate, and all its property movable and immovable, now owned or hereafter to be acquired, and its rights and franchises in the States 346
of Louisiana, Mississippi, Tennessee and Kentucky to Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Tennessee, and Lewis V. F. Randolph of the City of New York in the State of New York, as Trustees;

Resolved, That numbers one to one thousand one hundred and ninety-nine inclusive of said bonds, shall be set apart to provide, under the acts of the State of Tennessee, for and to be substituted for the bonds of the 347
State of Tennessee, issued to the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, to be registered and certified pursuant to said statutes of said State of Tennessee by the Comptroller thereof, and to be issued to the party or parties paying the lien of the said State, or to furnish the means to pay and satisfy said lien, and to be entitled to and in fact become, and as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage upon the property of this 348
company in the State of Tennessee, the same precisely as is now declared to exist in favor of the said State, under and by virtue of the statutes thereof in pursuance of which the loan and advance of State Bonds was made to the company or companies, to whose rights and property this company has succeeded, and with all rights, privileges, and liens created by said statutes, and all

powers to enforce the same originally residing in said State;

Resolved, That said Bonds from numbers one thousand two hundred, to four thousand one hundred and forty inclusive, shall be reserved and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the purchase or payment of the outstanding first Mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, being two thousand nine hundred and forty-one of said bonds;

Resolved, That said Bonds numbered from four thousand one hundred and forty-one, to five thousand six hundred and forty inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the payment or purchase of the outstanding second Mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, being one thousand five hundred of said Bonds;

Resolved, That said Bonds numbered from five thousand six hundred and forty-one, to six thousand one hundred and forty inclusive, shall be reserved and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of paying and liquidating, the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and Great Northern Railroad Company, and the Matured Coupon Bonds issued to provide for the postponement of the date of payment of said Coupons, being five hundred of said Bonds;

Resolved, That said Bonds numbered from number six thousand one hundred and forty-one, to seven thousand one hundred and thirty-two inclusive, shall be reserved and shall be deposited with said Trustees and shall be used for the purpose of being exchanged for, or cancelling, or providing for the payment or purchase of the outstanding Bonds under the first mortgage of

the Mississippi Central Railroad Company, being nine 353
hundred and ninety-two of such Bonds, or so many thereof as shall be needed to cancel and extinguish all of said Bonds which are outstanding, and are legal and valid obligations;

Resolved, That said Bonds numbered from seven thousand one hundred and thirty-three, to nine thousand one hundred and twenty-nine inclusive, shall be reserved and shall be deposited with said Trustees, and said Bonds, or so many thereof as shall be necessary, shall be used for the purpose of being exchanged for, 354
or of providing for the payment and satisfaction of the outstanding Bonds under the second Mortgage of the Mississippi Central Railroad Company, which are legal and valid obligations; and none of said Bonds referred to in this or the last resolution, shall be removed from said deposit, or used for any other purpose, until the whole of said first and second Mortgage Bonds of the said Mississippi Central Railroad Company which are outstanding and valid obligations shall be paid or cancelled; 355

Resolved, That said Bonds numbered from nine thousand one hundred and thirty, to ten thousand three hundred and fifty inclusive shall be reserved and set apart, and shall be used for the purpose of paying and satisfying the outstanding coupons and scrip, and other liens which may be valid, and prior to this mortgage upon the property, Railroad and franchises which were of the said Mississippi Central Railroad Company, until all such liens are cancelled being one thousand two hundred and twenty-one of said Bonds, or so many 356
thereof as shall be necessary for the purpose of cancelling and satisfying said coupons, scrip and liens;

Resolved, That said bonds numbered from number ten thousand three hundred and fifty-one, to ten thousand eight hundred and fifty inclusive, being five hundred of such Bonds, shall be used and issued to supply the means to take up and pay any remaining prior liens

or incumbrances upon the property hereby mortgaged, any deficiency in any of the particular appropriations hereinbefore made, and the general expenses of said trust;

Resolved, That the residue of the Bonds shall be placed in the hands of the said Trustees, and shall be executed by the President of this Company, and certified by the said Trustees only upon expenditures being made, or liabilities incurred:

First.—In the payment of any coupons now overdue and not postponed, upon the first and second mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, and upon first mortgage Bonds of the Mississippi Central Railroad Company, not hereinbefore specially provided for;

Second.—In constructing and improving the line of Railroad of this Company, with its switches, turn-outs, branches, side-tracks and equipments, or for payment of debts, or liabilities already incurred for such construction and improvement; and upon evidence satisfactory being furnished to the said Trustees of the amount required to discharge debts and liabilities incurred, or necessary to incur, in improving, completing and putting the Railroad in order as a first-class Railroad, or in procuring additional equipment therefor, they shall deliver to the said corporation, or to purchasers of said Bonds, so many of the said Bonds as they shall deem equivalent to the amount of said expenditures, until the said line from New Orleans to the Ohio river as aforesaid, shall be fully completed and equipped as a first-class Railroad, or until the whole number of the said thirteen thousand Bonds, after applying such portion thereof as has been by these resolutions specially appropriated, shall have been delivered to the Company or to purchasers thereof;

Resolved, That the said mortgage to be executed for the security of the said Bonds, shall contain the ordinary provisions and conditions, as shall be advised by

counsel, and generally the following covenants and 361
agreements ;

First.—That until default this Company shall retain the possession and use of the mortgaged premises ;

Second.—That this Company will pay and discharge all taxes, or assessments which may be imposed upon the mortgaged premises, or any part thereof;

Third.—That in case of default in the payment of any of the coupons or interest warrants, on any of the said Bonds, as they respectively become payable, and the continuance of such default for ninety days, or of 362
default in the payment of the principal when the same becomes due, or of any breach of any of the conditions or covenants in the said mortgage contained, the said mortgage shall become due and payable at the option of the holders of one million ($1,000,000) dollars of said Bonds, and the said Trustees as aforesaid or their successors shall, upon demand of the holders of said Bonds to the amount of one million ($1,000,000) dollars, enter into and upon said Railroad, and operate and use the same, for the benefit of the holders of said Bonds, 363
as may be authorized by law, and shall thereafter, upon like demand, take proceedings for the foreclosure and sale of the Railroad and premises, for the benefit of the holders of said Bonds ; provided that if this Company, or its successors or assigns, shall after any such forfeiture has been made or suffered, and the principal of said Bonds has been made due in consequence, and before a sale of said premises has been actually had under said mortgage, pay or tender the amonnt of interest in arrears, with interest thereon, and all costs 364
and expenses incurred in proceeding to foreclose said mortgage, such forfeiture shall be waived, and this Company shall be entitled to respossess itself of said property, and such mortgage shall stand as if no default had occurred ;

Fourth.—That all the said bonds now authorized to be issued, or which may be sold and negotiated, are upon

365 an equality so far as regards the security upon the entire property described in such mortgage, and shall be upon like equality in the payment thereof, except the bonds issued in payment or substitution for the bonds of the State of Tennessee, to the amount of one million one hundred and ninety-nine thousand ($1,999,000) dollars, which besides and in addition are by law entitled to, and are to be recognized as holding the first lien in preference to the residue of said bonds, and to all other obligations, mortgages or debts whatever, upon the
366 railroad and property of this corporation, within the limits of the State of Tennessee.

That in the case of default in the payment of interest, or of the principal of any of the said bonds to be numbered from number one to number one thousand one hundred and ninety-nine inclusive, and which will bear the certificate of the Comptroller of the State of Tennessee, and will be substituted and issued in exchange for bonds of said State, the said Trustees, upon the request of the holders of five hundred of said bonds, may ap-
367 point a Receiver, with the usual powers, rights and duties of Receivers, who shall enter upon and take possession of so much of the railroad and property of this Company, as lies within the limits of said State of Tennessee, for and in behalf of said trustees and the holders of said bonds, for the protection and enforcement of the lien of said bonds, as succeeding to said State under the statutes thereof; or the said trustees, upon the like request, may themselves, in case of any such default, enter upon and take possession of all that por-
368 tion of said railroad and property within the State of Tennessee, as aforesaid, and manage and operate the same, so long as such default shall continue, for the benefit and protection of the holders of said substituted bonds, in the same manner as a Receiver appointed by a proper court having jurisdiction; and this Company, upon request of said trustees, in case of such default, will surrender to said trustees, or to the Receiver so ap-

pointed by them, the possession of said railroad within 369
the State of Tennessee, and will suffer the use and occupation thereof, so long as such default continues, by or for the benefit of said trustees, or the holders of said substiteted bonds.

Fifth.—That all the said bonds, after reservation of those hereinbefore specified, and the proceeds thereof, shall be faithfully used and applied to the construction, completion and equipment of the railroad and property, structures and buildings of the said Company, the payment of debts or liabilities already incurred for the 370
same, and of liens and charges prior to the said proposed mortgage.

Sixth.—That whenever and as often as the Company shall acquire any additional land, or other property, the same shall be held and possessed under and subject to the mortgage made to secure the said bonds.

Seventh.—That the Company will, from time to time, if thereunto requested by the trustees named in said mortgage, or their successors, execute and deliver any further deed or assurance for the better assuring and 371
conveying its railroad and property, and franchises, whether now owned, or hereafter acquired, for the securing of the payment of the principal and interest of said bonds.

Eighth.—That the said trustees or their successors, shall be empowered to make such releases or exchanges of any property, in said mortgage or deed of trust described, and which may be needed or used for the track, buildings or other purposes of said road, as may be expedient, upon condition that the net proceeds of all 372
property so released shall be used only in the purchase of other property or equipment for the road, or in the payment of said bonds or obligations, and that all property taken in exchange shall become subject to said mortgage in like manner with the property exchanged;

And whereas to make the assurance and security of

this mortgage and deed of trust complete, and to remove any question that it will create a perfect lien upon the whole said line of Railroad, from New Orleans to the Ohio River, as aforesaid, and upon the property, estate, franchises and interests which were at any time heretofore owned, or exercised or operated by the said New Orleans, Jackson and Great Northern Railroad Company or said Mississippi Central Railroad Company, the Corporations known as the New Orleans, Jackson and Northern Central Railroad Company, and the Central Mississippi Railroad Company, parties of the second and third parts hereto, have agreed and the respective Boards of directors thereof have authorized and directed, that the said Corporations should unite in the execution of this mortgage or deed of trust, to secure the bonds to be issued as hereinbefore mentioned.

NOW THIS INDENTURE WITNESSETH that the said parties of the first, second and third parts, in consideration of the premises, and for securing payment of the bonds to be made and executed to the amount of thirteen millions of dollars, in lawful money of the United States, as hereinbefore mentioned, and the interest to accrue thereon, and in consideration of the sum of ten dollars lawful money of the United States, unto them well and truly paid by the parties of the fourth part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, confirmed, assigned, transferred, and set over, and by these presents do grant, bargain, sell, release, confirm, assign, transfer and set over unto the said parties of the fourth part, and their lawful successors in the trust hereby created, all and singular the Railroad aforesaid, with its appurtenances, depots, depot grounds, branches, furniture and equipments, and all and every right, title or interest which said parties of the first, second, or third parts, or either of them, had or has, or shall hereafter acquire in, or to the same, being the line of railroad formerly

known in part as the New Orleans, Jackson and Great 377
Northern Railroad, and in part as the Mississippi Central Railroad, and subsequently, by the consolidation of said two companies as the New Orleans, St. Louis and Chicago Railroad, and now intended to be owned and operated as one continuous line of railroad, from New Orleans to a point at or near Fillmore, upon the Ohio River opposite Cairo, by the said party of the first part, with all its branches, extensions and appurtenances, and with all the real estate now owned by the said party of the first part, or by the said parties of the second and 378
third parts, or either of them, or which may hereafter for the purposes of said railroad, be owned or acquired by the party of the first part, and all rights of way, rails, tracks, workshops, machinery, depots, depot grounds, improvements, tenements, and hereditaments, now owned by said parties of the first, second and third parts, or either of them, or hereafter to be acquired by said party of the first part, its successors or assigns, for the construction, operation and management of the said railroad; together with all rolling stock, locomotives, 379
tenders, cars and equipments, machinery, tools, implements and materials, and all and singular the other personal property of every kind, nature and description, belonging to said party of the first part, or to the said parties of the second or third parts, now or hereafter in use, or intended for use upon the said railroad, or in connection with the proper equipment and operation of the same, and also all and singular the corporate rights, powers and privileges, and franchises of the said party of the first part, now owned and possessed, or which may 380
hereafter be acquired for the construction, maintenance and operation of said railroad, or connected with or relating to the same, and all the like powers, privileges, and franchises of the said parties of the second and third parts, or either of them, so owned or possessed, or which may be acquired by them or either of them, with all rights, privileges and appurtenances whatsoever, affect-

381 ing any of the hereby granted and mentioned premises and estates, or thereunto belonging, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, or of the said parties of the second and third parts, either at law or in equity, of, in and to the same and every part and parcel thereof;

To have and to hold the same, with the appurtenances, unto the said parties of the fourth part, their successors and assigns, in trust for the use,
382 benefit and security of the several persons and their successors, administrators, executors or assigns, who shall hereafter become the owners and holders of any of the bonds to the amount of thirteen million ($13,000,000) dollars, intended to be hereby secured, subject, however, to the right of the party of the first part, its successors and assigns, to retain the free and uncontrolled use, enjoyment, possession and management of the premises hereby granted, or intended so to be, until by reason of default by said party of the first
383 part, in keeping and performing the covenants and agreements in this Indenture contained, or any of them, the said parties of the fourth part are, as hereinafter provided, authorized to enter upon and take possession thereof, or sell the said premises as hereinafter set forth;

And it is hereby expressly covenanted and agreed by and between the parties hereto, covenanting and agreeing for themselves and their successors and assigns, and for all parties who shall become interested as holders,
384 or owners of the bonds intended to be secured hereby, in manner following, that is to say;

First.—That the said party of the first part, its successors and assigns, will punctually pay the holders of the bonds aforesaid, intended to be secured hereby, or any that may be issued and accepted in lieu or renewal or substitution of the same respectively, interest thereon semi-annually, as the same shall become due and

payable, according to the terms of said bonds and the 385
coupons attached thereto, on the days and at the place therein respectively mentioned; and also on the day and at the place mentioned in said bonds, and whenever the principal sum of the same, or any of them, shall, according to the provisions thereof, become due and payable, will fully and entirely pay off and satisfy the whole of said bonds, principal and interest, without deduction from either said principal or interest for any tax, levy or assessment imposed upon the premises, franchises and property hereby conveyed, or upon the 386
principal or interest of said bonds, either by the United States of America, or by the States of Louisiana, Mississippi, Tennessee and Kentucky, or either of them;

Second.—That if the party of the first part, its successors or assigns, shall at any time hereafter, after demand made, make default or refuse, neglect or omit, for any period exceeding three (3) months, to pay the semi-annual interest on the bonds intended to be hereby secured, or any of them, or any interest-warrant, or coupon, issued for the payment thereof, or shall, after 387
demand made, make default or refuse or neglect or omit, for any period exceeding three (3) months, after their maturity, to pay the principal sum of each, and all of the said bonds intended to be hereby secured, or of any of them, then, and in the first case of default in the payment of interest hereinabove stated, and upon demand of the holders of said bonds to the amount of one million ($1,000,000) dollars, the whole principal sum of the said bonds, shall forthwith become due and payable, anything in the said bonds, or in these pres- 388
ents to the contrary notwithstanding, and in such case, or in the case of default in the payment of principal of any of the said bonds, for three months after maturity of the same, the said trustees or trustee, for the time being, upon the written request of the holders of one million ($1,000,000) dollars in amount of the said bonds then outstanding, shall enter upon, and take possession

of the railroad, estates, real and personal, and premises hereby mortgaged, or agreed, or intended so to be, and operate, use, manage and control the said railroad and premises to the best advantage, and appropriate the net income and proceeds derived therefrom, over and above running expenses, and interest on prior encumbrances, after deducting the expenses of this trust, and any sum which may be necessary to indemnify said trustees or trustee, for any liability, loss, or expenditure, for or on account of any matter, or thing done by him or them in good faith, in pursuance of his or their duty as such trustees, to the payment in full without preference—first of the interest, secondly of the principal of all the aforesaid bonds then outstanding, if said income and proceeds be sufficient, but if not, then *pro rata*, subject only to the prior rights, lien and preference to which the holders of the bonds to be issued, as hereinafter mentioned, in substitution for the bonds of the State of Tennessee, shall be entitled in the application of the net income and proceeds of so much of the said railroad as lies within the boundaries of said State of Tennessee; and the said trustees or trustee shall also, in case of such default, after, or without entering upon and taking such possession, upon the written request of holders of a like amount of said bonds then outstanding, proceed to sell the said railroad, estate real and personal, corporate rights and franchises, and all the premises hereby mortgaged, or agreed, or intended so to be, to the highest bidder, at public sale, in the city of New York, first giving at least three months' notice of such intended sale, by publication, to be made twice in each week, in at least two daily newspapers published in the city of New York, and in one daily newspaper published in the city of New Orleans, and in one newspaper published in each of the said States of Mississippi, Tennessee and Kentucky, and convey the same to such purchaser or purchasers, free from all and every the trusts hereby created, and

without liability to see to the application of the purchase 393
money. And the said parties of the fourth part, their survivor or survivors, successor or successors in the trust for the time being, shall execute and deliver to the purchaser or purchasers a deed of the premises, which shall convey to him or them a full, valid and indefeasible title to the said railroad, franchises and rights, and all the estate, real and personal property, movable or immovable, herein described, and hereby mortgaged and conveyed, or intended so to be, which shall be a perpetual bar to any claim or demand thereto, or to any 394
part thereof, by the said parties of the first, second or third part, or their successors, or any person claiming or to claim, under them, or either of them. And the said parties of the first, second and third parts, for themselves, their successors or assigns, covenant, promise and agree, to and with the said parties of the fourth part, their survivor or survivors, successor or successors, and assigns, and their grantees, under any such conveyance, that they will never claim any right title, interest or equity in or to any portion of the mort- 395
gaged premises, in bar, opposition or impeachment of the title passed thereby. Or the said parties of the fourth part, their survivors, successors or assigns, may, in their discretion, in case of any default in any of the covenants or conditions herein, foreclose the equity of redemption of the said parties of the first, second and third parts, and of all other persons having any legal or equitable rights, or claims, in or to the mortgaged premises, or any part or parcel thereof, by any proceedings in law or in equity provided for by the respec- 396
tive States, in which portions of the said railroad are built, and in the Courts of such States, or in the proper Courts of the United States of America, having jurisdiction thereof;

And the said parties of the fourth part, in case of the sale of said premises under and by virtue of the power thereby granted and created, shall and will appropriate

the purchase money thereof, after such deductions made for the expenses of the trust and of such sale, and indemnity to the Trustees as aforesaid, to the payment as aforesaid—*first*,—of the interest due on, and, —*secondly*,—of the principal of the said outstanding bonds, in full if said purchase money be sufficient but, if not, then *pro rata* and without preference, excepting only the proceeds of so much of the said railroad, and property as is situated within the State of Tennessee, and to which the holders of the substituted bonds certified by the Comptroller of said State, are entitled in preference as herein agreed : Provided, however, that if the said party of the first part, its successors or assigns, shall in case of any such default in the payment of such interest, or of any interest upon prior mortgages, hereinafter convenanted to be paid or provided for, at any time before a sale has been actually made, either under the power of sale herein contained or under the decree of any courts or courts, pay or tender to said parties of the fourth part, or their successors, or to the parties entitled thereto, the amount of interest so in arrear, with interest thereon, from the time of default, and all costs, counsel fees, commissions and expenses incurred in the proceedings for such sale, or in taking possession of, and operating said railroad by said parties of the fourth part, any such default, and forfeiture shall be opened, and the said party of the first part, its successors or assigns, shall resume possession of said railroad and premises, and all parties hereto shall be restored to their first rights, the said default and consequent proceedings notwithstanding, and as if the same had not occurred; and in the event of there being in the hands of the said Trustees any portion of the Trust Estate, or of the proceeds thereof, after payment in full of the principal and interest of the aforesaid bonds, the said Trustees shall reconvey or pay over the same to the party of the first part, its successors or assigns ;

Third.—That the bonds to be issued under and by 401
virtue of this mortgage, or deed of trust, and to be secured by it, shall be bonds of one thousand dollars each, and of the tenor and effect following:

UNITED STATES OF AMERICA.

States of Louisiana, Mississippi, Tennessee and Kentucky.

No..... 402

Chicago, St. Louis and New Orleans Railroad Company, First Mortgage Seven per cent Loan.

The Chicago, St. Louis and New Orleans Railroad Company, acknowledges itself indebted to the bearer in the sum of one thousand dollars, which it promises to pay in lawful of the United States, on the first day of November, in the year one thousand eight hundred and ninety-seven, at its office in the city of New York, and to pay interest thereon at the rate of seven per cent. 403
per annum, payable semi-annually at said office, in like lawful money, upon presentation and surrender of the interest warrants, or coupons hereto annexed, on the first days of May and November, in each year, as they respectively become payable, so long as the principal remains unpaid, without deduction for State or United States Taxes.

This is one of thirteen thousand bonds of similar amount and date, referred to in a mortgage made by the said Chicago, St. Louis and New Orleans Railroad 404
Company, and the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company to Adolph Schreiber, of the City of New Orleans in the State of Louisiana, James Fentress, of Bolivar, in the State of Tennessee, and Lewis V. F. Randolph, of the City of New York, in the State of New York, Trustees, dated the eighth day of Novem-

405 ber 1877, to secure the payment of such bonds, and when the certificate hereon endorsed is subscribed by said Trustees, it will be secured thereby.

Seal of the Chicago, St. Louis, and New Orleans Railroad Company.

In witness whereof the said Chicago, St. Louis and New Orleans Railroad Company has caused its common seal and the signatures of its President and Secretary, to be hereto affixed the eighth day of November, 1877.

406

W. H. OSBORN,
President.
STUYVESANT FISH,
Secretary.

ENDORSEMENT.

The within is one of thirteen thousand bonds of one thousand dollars each, secured by a mortgage made by the Chicago, St. Louis and New Orleans Railroad Com-
407 pany, and the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company to the undersigned as Trustees, dated the 8th November, 1877, and has been duly issued in pursuance of the trust created and conditions contained in said mortgage.

November 8th, 1877.

ADOLPH SCHREIBER,
JAMES FENTRESS,
LEWIS V. F. RANDOLPH,
} Trustees.

408 Fourth.—That the said bonds to be issued under this mortgage, numbered from number one to number one thousand one hundred and ninety-nine inclusive, shall be set apart, issued to, or used by said party of the first part, or persons acting with its consent and authority, to provide and be substituted for the bonds of the State of Tennessee, heretofore issued to the Mississippi Central and Tennessee Railroad Company, and

to the Mississippi Central Railroad Company, and shall 409
be registered and certified, pursuant to the statutes of the State of Tennessee, by the Comptroller thereof, and such bonds of the aforesaid numbers so certified shall be entitled to and in fact become, as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage, prior to the lien of the residue of the bonds secured hereby, and to all other mortgages and liens whatever upon the property of the said parties of the first and third parts, in the State of Tennessee; and in case of any default in the payment 410
of interest upon the bonds hereby secured, or any of them, or of default in the payment of the principal sum at their maturity, and of possession being taken or a foreclosure and sale had by the Trustees as herein provided, the holders of the said bonds, numbered from number one to number one thousand one hundred and ninety-nine, issued under this mortgage, besides and in addition to their rights in common with other bondholders in the residue of said property and [its proceeds, shall be entitled to priority in the appropri- 411
ation of such income and proceeds so far as the same shall be derived from the portion of the said railroad hereby mortgaged within the limits of said State of Tennessee, as well as to an equal and *pro rata* share in the income and proceeds of the residue of said mortgaged property with the residue of the bonds secured hereby.

Fifth.—That the said bonds to be issued under this mortgage numbered from number one thousand two hundred to number four thousand one hundred and 412
forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of purchasing, or of being exchanged at par for the outstanding mortgage bonds heretofore issued by the New Orleans, Jackson and Great Northern Railroad Company, which are a prior lien upon the railroad and property heretofore owned and operated

by the same. And the said two thousand nine hundred and forty-one bonds shall be used and employed for no other purpose whatever, and the maturity of such outstanding bonds of said New Orleans, Jackson and Great Northern Railroad Company, which may not be so exchanged, whereupon the said party of the first part may sell the same under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, or when all of them shall be paid, any unsold bonds then remaining shall be delivered to the said party of the first part.

Sixth.—That said bonds to be issued under this mortgage, numbered from number four thousand one hundred and forty-one to five thousand six hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par, or sold to pay or redeem or purchase the outstanding second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad Company, hereinbefore mentioned. And said one thousand five hundred bonds, shall be used and employed for no other purpose whatever, until the maturity of said outstanding second mortgage bonds which may not be so exchanged, whereupon said party of the first part, may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, and when all of them shall be paid, any of said one thousand five hundred bonds, then remaining, shall be delivered to said party of the first part.

Seventh.—That the said bonds to be issued under this mortgage, numbered from number five thousand six hundred and forty-one, to number six thousand one hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par for,

or of paying and liquidating the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and Great Northern Railroad Company, provided for by the matured coupon bonds, and mortgage of the New Orleans, Jackson and Northern Railroad Company, until said coupons or said matured coupon bonds shall be fully paid and satisfied or cancelled; and if there shall then remain any of said five huudred bonds, after all such coupons shall be paid or cancelled, the same shall be returned and delivered to the party of the first part;

Eighth—That the said bonds to be issued under this mortgage, numbered from number six thousand one hundred and forty-one, to number seven thousand one hundred and thirty-two, inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par, or of furnishing the means to pay and cancel or purchase the outstanding bonds under the first mortgage of the Mississippi Central Railroad Company, herein before mentioned; and said nine hundred and ninety-two bonds shall be used and employed for no other purpose whatever, until the maturity of said outstanding first mortgage bonds of the Mississippi Central Railroad Company which shall not be so Exchanged which are legal and valid obligations against said Company, and entitled to a lien upon the premises mortgaged, hereby or some portion thereof formerly owned by said Company; whereupon the said party of the first part may sell the same under the direction of the parties of the fourth part and apply the proceeds to the payment of any such outstanding bonds then unpaid, which are legal and valid obligations as aforesaid; and if there shall remain none unpaid, and when all of them shall be paid, any of said nine hundred and ninety-two bonds then remaining shall be delivered to the said party of the first part:

Ninth.—That said bonds to be issued under this mortgage, to be numbered from number seven thousand one hundred and thirty-three to number nine thousand one hundred and twenty-nine inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and said bonds shall be used for the purpose of being exchanged at par, or providing for the payment and satisfaction or purchase as herein directed, of the outstanding bonds under the second mortgage of the said Mississippi Central Railroad Company, which are valid and legal obligations, and a lien upon the property and premises hereby mortgaged, or some portion thereof heretofore owned by said Company. And the said one thousand nine hundred and ninety-seven bonds, or so many thereof as shall be necessary, shall be used for the purpose of being exchanged, or providing for the payment and satisfaction of the outstanding bonds, under the second mortgage of the Mississippi Central Railroad Company, which are legal and valid as aforesaid, and for no other purpose whatever, until the maturity of any of said outstanding bonds, which may not be so exchanged; whereupon said party of the first part, may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid; and whenever there shall remain none of said bonds unpaid, and when all of them shall be paid and exchanged, any of said one thousand nine hundred and ninety-seven bonds then remaining, shall be delivered to the said party of the first part.

Tenth.—That the said bonds to be issued under this mortgage, to be numbered from number nine thousand one hundred and thirty, to ten thousand three hundred and fifty inclusive, shall be reserved and set apart, and shall be used for the purpose of purchasing or being exchanged for the outstanding coupons and scrip issued for interest upon the first and second mortgages of

which may be valid and prior to this mortgage, upon 425
the property and franchises of said company, until all said outstanding coupons, scrip and other liens, upon said property of the said Mississippi Central Railroad Company, shall be fully paid, satisfied and cancelled, when any of said one thousand two hundred and twenty-one bonds remaining unsold, or unissued, shall be delivered to the said party of the first part;

Eleventh.—That the said bonds to be issued under this mortgage, and numbered from number ten thousand three hundred and fifty-one to number ten 426
thousand eight hundred and fifty inclusive, shall be used and issued from time to time to supply the means to pay each or any of the prior liens or incumbrances upon said premises hereby mortgaged, or any portion thereof, and the general expenses of the trust hereby created, and of the cancelling and satisfaction of the debts and liens herein referred to;

Twelfth.—That the residue of the bonds to be issued under this mortgage, numbered from number ten thousand eight hundred and fifty-one to number thir- 427
teen thousand inclusive, shall be used—First, to provide funds for the payment of coupons overdue and not postponed, upon the first and second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad, and upon the first mortgage bonds of the Mississippi Central Railroad Companies, and not otherwise herein specifically and sufficiently provided for, and other debts and liens prior to this mortgage; Second, for the construction, completion and improvement of the line of railroad of the party of the first part, and 428
its equipment, and for the payment of debts, or liabilities incurred for the same, and to put the said railroad in order as a first-class railroad, with sufficient equipment to operate the same. And upon evidence being furnished to the said parties of of the fourth part, or their successors, that any expenditure has been made, or liability incurred for such construction or improve-

ment, since the tenth day of March, 1876, they shall deliver to the said party of the first part, or to the purchasers of the said bonds, so many of said bonds, or the proceeds thereof, as shall be equivalent to the amount of such overdue coupons so paid, or of such expenditures so made or incurred, until all such debts, liens and coupons shall be fully paid, and until the said line from New Orleans to the Ohio River, as aforesaid, shall be fully completed and equipped as a first-class railroad, or until the whole number of the said thirteen thousand bonds, after applying such portions as have been heretofore by these presents specifically appropriated, shall have been delivered to the said party of the first part, or to the purchasers thereof;

And the said party of the first part, for itself, its successors and assigns, doth covenant and agree with the said parties of the fourth part and their successors, and to and with the holders of the bonds to be issued and secured under this mortgage, that they will at all times, until the existing mortgages hereinbefore mentioned, upon the property hereby mortgaged, or certain portions thereof, shall have been extinguished by the substitution of the bonds hereby secured, for the bonds issued under said prior mortgages, or by the payment thereof, keep, pay, and discharge any and all interest which shall become due and payable, upon the bonds secured by said prior mortgages. And that all the said bonds to be issued under and secured by this Indenture, after reservation of those hereinbefore specified, and the proceeds thereof, shall be faithfully used and applied to the construction, completion and equipment of the railroad property, structures and buildings of the said party of the first part, and to the payment of liens and charges thereon, as aforesaid;

And the parties aforesaid, for themselves their successors and assigns, do respectively farther covenant, promise and agree that, in case default shall at any time be made in the payment of any interest upon any

of the said bonds numbered from number one to num- 433
ber one thousand one hundred and ninety-nine inclusive, which will bear the certificate of the Comptroller of the State of Tennessee, and will be bonds substituted or issued in exchange for the bonds of said State, or in the payment of the principal of said bonds at their maturity, and provided the holders of five hundred of said bonds shall in writing request or demand the same, the said parties of the fourth part, or their successors, may and will appoint a suitable person to take possession of so much of said road and its appurte- 434
nances as lie within the limits of the State of Tennessee, and are subject to the prior and special lien of the bonds aforesaid with the usual powers and duties of a receiver, and in like manner as the Governor of said State, under the statutes thereof, would appoint such receiver, if the State had continued to hold its lien without transfer of the same;

Or in the event of any such default, and upon the like request of the holders of five hundred of said bonds, the said trustees may and will themselves enter 435
upon and take possession of said road, and its appurtenances, within the State of Tennessee aforesaid, and operate and manage the same, and apply the net earnings thereof to the payment and satisfaction of the interest or principal of said bonds, so in arrears, in like manner, and with the same rights, powers and duties as would be possessed and exercised by a receiver, who should be appointed by a Court of competent jurisdiction in such a case. And the said party of the first part, its successors and assigns, in case of such default, 436
upon the request or demand of said parties of the fourth part or their successors, will forthwith surrender to said parties of the fourth part, or their successors, or to the agent or receiver, appointed by them, the possession and control of said railroad, within the State of Tennessee, in the same manner as they would surrender the same to a receiver appointed by a compe-

tent Court, or to a receiver who should be appointed by the Governor of the State of Tennessee, under the statutes aforesaid, if such default had occurred before any transfer of its lien or rights by said State;

And it is further covenanted and agreed by and between the parties hereto, their successors and assigns, that whenever and as often as the said party of the first part, or its successors, shall acquire any franchises, lands, equipment, or other property or interest of any name or nature, for the use of, or in connection with its railroad, or for the purposes of its incorporation, the said company, its successors or assigns, shall, and will acquire, possess and hold the same, and every part and parcel thereof, upon and subject to the lien and trusts of this indenture; and that the said party of the first part, its successors and assigns, will, from time to time, and at all times hereafter, and as often as thereunto requested by the parties of the fourth part, their successor or successors, execute and deliver any and all further deeds, conveyances and assurances in the law for the better assuring unto the said parties of the fourth part, or their successors, upon the trusts herein mentioned, all their railroad, its equipment and property of every nature, now owned or which may be hereafter acquired, including the franchise to be a corporation; and that in case the said party of the first part, its successors or assigns, shall thereafter receive or acquire lands or other property, and the said parties of the fourth part, their successor or successors, in behalf of the holders of the bonds issued under this indenture, shall deem it for the interest of their trust, and shall request the same, the said party of the first part, and its successors, will, from time to time, execute and deliver, any and every such other mortgage or deed of trust or further assurance covering the lands or property so received or acquired, which shall be necessary to hold and bind the same, as security for the payment of the principal and interest of the bonds aforesaid,

and performance of the covenants and stipulations of 441
this indenture;

And it is further covenanted and agreed, that it shall and may be lawful for the said party of the first part, its successors or assigns, at any time or times hereafter, to exchange for other property or sell any part of the hereby mortgaged premises, other than the said Railroad, which may not be necessary for the uses and purposes of such Railroad, and to convey the same without liability on the part of the grantee as to the disposition of the purchase money or of the property received in exchange 442
by the party of the first part, and the said parties of the fourth part, or their successors, shall and will on the request of the party of the first part, its successors, or assigns, execute all necessary releases for that purpose, the party of the first part covenanting, that the proceeds of any sale so made shall be vested by it, either in the improvement of the remaining part of the mortgaged premises, or in the purchase of other property, real or personal, for the uses of its railroad, which property so purchased, as also any acquired in exchange 443
as aforesaid, shall be subject to all the trusts hereby created of the property described in this Indenture, or in the purchase of bonds issued hereunder, which bonds so purchased, shall be forthwith cancelled and delivered to the parties of the fourth part, and the said parties of the fourth part and their successors may also in their discretion, on the request of the party of the first part, consent to any change in the location of the track of said Railroad, or the depots and buildings, or structures thereof, as may seem expedient, and are author- 444
ized to make and deliver all instruments necessary and proper to effect such objects. And the party of the first part further covenants and agrees that whenever it or its successors or assigns, shall acquire any lands, property, or franchises, or equipments of any nature or description, for use in connection with said Railroad, by any such change in the location of the tracks, depots

445 or buildings thereof, or otherwise, they will hold the same upon, and subject to the trusts of this Instrument, until conveyances thereof, shall have been made, and delivered if required, and the party of the first part; and its assigns or successors, shall and will, whenever so requested, execute and deliver such further conveyances and assurances, for the better assuring to the parties of the fourth part, and their successors upon the Trusts herein expressed, any properly real or personal, movable or immovable, to which the said party
446 of the first part, or its successors or assigns, may become entitled by any purchase or exchange, or alteration in the location of the tracks, depots, or buildings of said Railroad as aforesaid.

And it is further covenanted and agreed, by and between the parties hereto, that in case of the death, resignation or inability of either of said parties of the fourth part, hereinbefore named as the Trustees under this indenture, the franchises, rights and property of every description, herein conveyed to them shall at
447 once vest in the survivor or survivors, and that such survivor or survivors, may, with the assent of the party of the first part, designate a person or persons, to succeed such person or persons dying, or resigning, or unable to act as one of the parties of the fourth part. And upon the person or persons so designated delivering to such survivors and to the said party of the first part, or its successors, a written acceptance of the trust, he or they, as the case may be, shall become the successor or successors of the person or persons so dying,
448 resigning or becoming unable to act with all the rights and powers herein and hereby vested in the said parties of the fourth part. And in case all the parties of the fourth part shall die, resign or become unable to act as aforesaid, so that there shall be no Trustees to discharge the trusts and duties created by this instrument, or if any survivor, or survivors and the party of the first part shall not agree in the choice of a person or

persons to succeed to and fill any such vacancy, persons 449
to succeed thereto or to fill said trusteeships, or any of them may be appointed by the Chief Justice of the Supreme Court of the State of Louisana, on the application of the party of the first part, or of any such surviving Trustee or Trustees, or of holders of at least one hundred bonds to be issued hereunder as aforesaid, provided that notice of the application be previously published in at least three daily papers in the city of New York, and one newspaper published in each of the States of Louisiana, Mississippi, Tennessee and Kentucky for 450
four successive weeks once in each week.

And the said party of the first part, its successors and assigns, further covenants and agrees to pay, to the said parties of the fourth part, and each of them, annually, for their ordinary services under trust and in the discharge of the duties hereby created the sum of three hundred ($300) dollars, together with any necessary expenses actually incurred for clerk hire and legal advice, and it is further covenated and agreed, and this trust is accepted upon the express condition that the 451
said Trustees, parties of the fourth part, shall not nor shall their successors, or any future Trustee or Trustees, incur any liability or responsibility whatever, in consequence of permitting or suffering the said party of the first part to retain or be in possession of the railroad property and premises hereby mortgaged or any part thereof, or for any destruction, deterioration, loss or damage which may be done to or incurred by the railroads or estates hereby mortgaged, either by the act or default of such party of the first part, or its agents 452
or servants, or of any other person or persons whomsoever, or for the consequences of any breach on the part of the party of the first part, or the parties of the second or third parts, of any covenants herein contained, or of any act of the party of the first part, its agents or servants, or of the parties of the second or third parts, nor for any other matter or thing except for their or his

453 own willful or negligent breach of the trusts herein expressed and contained;

And it is expressly covenanted and agreed, by and between the parties aforesaid, that all and singular the covenants, conditions and agreements herein contained, shall extend and apply to the successors and assigns of the respective parties, whether they be expressly named therein or not;

And it is hereby expressly provided, and this Indenture is made upon condition that, if the said Chicago,
454 St. Louis and New Orleans Railroad company, its successors or assigns, shall well and truly pay, or cause to be paid, all the interest, without deduction of any taxes or assessments, as the same shall from time to time become due and payable upon the said bonds, as hereinbefore stipulated, and shall pay the said principal of said bonds at maturity according to the tenor and intent thereof, and shall keep and perform all and every the covenants herein contained on the part of the said Company, then and in that case this Indenture
455 shall be and become null and void, and the estate hereby granted or conveyed, or agreed so to be, shall be void and of no effect, anything herein contained to the contrary notwithstanding; otherwise this Indenture and the estate hereby granted and conveyed, shall be and remain in full force;

In witness whereof, the said Chicago, St. Louis and New Orleans Railroad Company hath caused its common seal and the signatures of its President and
456 Secretary to be hereto affixed; and the said New Orleans Jackson and Northern Railroad Company hath also caused its common seal and the signatures of its President and Secretary, to be hereto affixed; and the said Central Mississippi Railroad Company hath also caused its common seal and the sig-

natures of its President and Secretary 457
to be hereto affixed; and the said
Adolph Schreiber of the city of New
Orleans in the State of Louisiana,
James Fentress of Bolivar in the State
of Tennessee, and Lewis V. F. Ran-
dolph of the City of New York in the
State of New York, Trustees, have
hereto set their hands and seals, all of
which is done the eighth day of No-
vember, the year of our Lord one thou- 458
sand eight hundred and seventy-seven.

THE CHICAGO, ST. LOUIS & NEW ORLEANS
RAIL ROAD COMPANY, by
W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

THE NEW ORLEANS, JACKSON & NORTHERN
RAIL ROAD COMPANY, by
W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Seal of the New Orleans, Jackson and Northern Railroad Company.

459

THE CENTRAL MISSISSIPPI RAILROAD
COMPANY, by
W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Seal of the Central Mississippi Railroad Company.

Signed, sealed and delivered by the said Messrs. Osborn and Fish in their said respective capacities in our presence.

L. E. SIMONDS.
W. W. FINLEY. 460

[SEAL.] A. SCHREIBER,
[SEAL.] JAMES FENTRESS. } Trustees.
[SEAL.] L. V. F. RANDOLPH.

L. E. SIMONDS.
ANDREW HERO, JR. } Witnesses to the signatures of A. Schreiber and James Fentress.

W. J. MAURIAC.
W. E. RUTTAN. } Witnesses to the signature of Lewis V. F. Randolph.

And whereas, an agreement for such con

461 STATE OF LOUISIANA,)
PARISH OF ORLEANS. } ss:
City of New Orleans.)

Be it remembered, That on this eighth day of November, in the year one thousand eight hundred and seventy-seven, before me, Andrew Hero, Jr., a notary public in and for the Parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified by the Executive authority, and under the laws of the State of Louisiana to take the acknowledgment and
462 proof of deeds or other conveyances to be used or recorded in said State; and also a Commissioner of the State of Mississippi, resident in said City of New Orleans, appointed by the Governor of the State of Mississippi, and duly qualified under the laws thereof to take acknowledgments and proofs of deeds and other conveyances to be used or recorded in said State; and also a Commissioner of the State of Tennessee, resident in said City of New Orleans, appointed by the Governor of the State of Tennessee, and duly com-
463 missioned and qualified under the laws thereof to take the acknowledgment and proof of deeds or other conveyances to be used or recorded in said State of Tennessee; and also a Commissioner for the State of Kentucky, resident in said City of New Orleans, duly commissioned and qualified by the Executive authority and under the State of Kentucky, to take the acknowledgment and proof of deeds or other conveyances to be used or recorded in said State—— came W. H. Osborn and Stuyvesant Fish, with each of whom I am person-
464 ally acquainted, and also personally known to me to be the identical persons who signed the foregoing instrument, and also known to me to be respectively the President and Secretary of the Chicago, St. Louis and New Orleans Railroad Company, the party of the first part in said instrument; and also known to me to be respectively the President and Secretary of the New Orleans, Jackson and Northern Railroad Company, the

party of the second part in said instrument; and also 465
known to me to be respectively the President and Secretary of the Central Mississippi Railroad Company, the party of third part in said instrument, who being by me duly sworn, did depose and say: That they reside in the City of New York; that they were respectively the President and Secretary of the Chicago, St. Louis and New Orleans Railroad Company; that they know the corporate seal of the said company; that the seal affixed to the foregoing instrument is such corporate seal and was affixed by authority of said company; 466
and that they signed their names to the said instrument as President and Secretary of said company, and in behalf thereof; and the said W. H. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of that company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

The said W. H. Osborn and Stuyvesant Fish did 467
further depose and say, that they were respectively the President and Secretary of the said New Orleans, Jackson and Northern Railroad Company; that they knew the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal, and was affixed by authority of said company, and that they signed their names to the said instrument as President and Secretary of said company, and in behalf thereof; and the said W. H. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official 468
act and deed, and as the act and deed of said company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

The said W. H. Osborn and Stuyvesant Fish did further depose and say, that they were respectively the President and Secretary of the said Central Mississippi Railroad Company; that they knew the corporate seal

of said company; that the seal affixed to the foregoing instrument was such corporate seal; and was affixed by the authority of said company, and that they signed their names to the said instrument as President and Secretary of the said company, and in behalf thereof; and the said W. H. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of said company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and have also hereto affixed my seal as said Notary Public and as Commissioner for each of the States above mentioned, at my office in the said City of New Orleans, the day and year last above written.

[Seal of Not. Pub.] Signed ANDREW HERO, JR.
Notary Public, Parish of Orleans, State of Louisiana.

[Seal of Com.] Signed ANDREW HERO, JR.
Commissioner for Mississippi, in and for Louisiana.

[Seal of Com,] Signed ANDREW HERO, JR.
Commissioner for Tennessee, in and for Louisiana.

[Seal of Com.] Signed ANDREW HERO, JR.
Commissioner for Kentucky, in and for Louisiana.

REGISTER'S OFFICE, 473

Hardeman County, Tennessee.

I. R. F. Ammons, Register of Hardeman County, Tennessee, do hereby certify that the foregoing forty-seven pages of printed matter are a true and perfect copy of the mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, to Adolphe Schrieber, James Fentress and Lewis V. F. Randolph, as the same now appears on record, in my office, in 474
Book F, pages 535 to 563, and that said original mortgage was registered, as aforesaid, in my office in said book, upon the twenty-first day of November, A. D., 1877, and was filed for registration on the (16th) sixteenth day of November, A. D. 1877, in my office as register.

In witness whereof I have hereunto set my hand and private seal, there being no public seal of my office, this fifth day of March, A.D. 1880.

(Sd.) B. F. AMMONS, [SEAL.]
Register of Hardeman County. 475

EXHIBIT No. 4, TO ANSWER OF ILLINOIS GENERAL RAILWAY COMPANY.

STATE OF TENNESSEE. }
Comptroller's Office. }

Received of the Chicago, St. Louis and New Orleans Railroad Company, by the hands of Adolphe Schreiber, James Fentress, and L. V. F. Randolph, trustees under the first mortgage of said company, the sum of twelve 476
hundred and ninety-three thousand two hundred and thirty dollars in the bonds and coupons of the State of Tennessee, which, together with one hundred and ten thousand dollars in money heretofore received from R. P. Neely, receiver, is in full payment and satisfaction of all indebtedness of the Mississippi Central and Tennessee Railroad Company to the State of Tennessee,

477 and also in full payment and satisfaction of all the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee.

The sum of twenty-three thousand two hundred and fifty-six dollars of the $110,000, paid in money as aforesaid, is in full of taxes on said railroad, its property and appurtenances in said State of Tennessee, for the years 1873, 1874, 1875, and 1876, and the sum of nine hundred and thirty-two 73-100 dollars is in full of the State tax on said railroad and property for the year
478 1877. The payment of taxes, aforesaid, for each of said years is made under protest, the said company insisting that the said railroad and property is and was exempt from such taxation by virtue of the charter of the Mississippi Central and Tennessee Railroad Company, Acts of 1853 4 of State of Tennessee, chapter one, section 13, and it agreed that the question as to whether such taxation aforesaid is valid and legally collectable, or whether said railroad and property was exempt from taxation for said years, or either of them (in case the Attorney-
479 General of the State does not advise the refunding of said taxes without litigation), shall be submitted to Chancellor Cooper or the Chancery Court at Nashville, Tennessee, and if said railroad and property is held by said court to have been exempt for those years, or said taxes improperly assessed, then the money paid for said taxes shall be refunded to said company; and the fact that said taxes have been paid shall not put said company in any worse position in any litigation as to this matter than it would have been if said taxes had been
480 refused to be paid until the legal questions, abovementioned, were settled.

In testimony whereof I have hereto set my hand and seal of office this November 28th, 1877.

[SEAL.] JAMES L. GAINES,
Comptroller.

EXHIBIT No. 5, 481

To Answer of Illinois Central Railroad Company.

STATE OF TENNESSEE.

We, James D. Porter, Governor, and Charles N. Gibbs, Secretary of State, of the State of Tennessee, do hereby certify, pursuant to section 6, of an Act entitled "An Act to liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," 482
passed February 25, 1869, that Adolphe Schreiber, James Fentress, and Lewis V. F. Randolph (trustees under a certain mortgage made the eighth day of November, 1877, between the Chicago, St. Louis and New Orleans Railroad Company, of the first Part; the New Orleans, Jackson & Northern Railroad Company of the second part; the Central Mississippi Railroad Company, of the third part; and the said trustees of the Fourth Part), as trustees for the purchasers and holders of the bonds, to be issued under said mortgage, 483
numbered from number one to number one thousand one hundred and ninety-nine inclusive, have paid in and delivered up bonds and coupons of the State of Tennessee, as authorized by the act aforesaid, equal in amount to the indebtedness heretofore created by the Mississippi Central & Tennessee Railroad Company, and the Mississippi Central Railroad Company which is the first lien on the Railroad and property heretofore known as the Mississippi Central Railroad, lying in the State of Tennessee, and has become a debt 484
of, and a first lien upon, the property of the Chicago, St. Louis & New Orleans Railroad Company, its successor, in the State of Tennessee; that such payment was made by and with the written consent of the Board of Directors of the Central Mississippi Railroad Company, and of the Chicago, St. Louis & New Orleans Railroad Company, as allowed by the statutes of Tennessee;

485 and that the said trustees, for and in behalf of the holders of said bonds to be issued under said mortgage, to provide and be substituted for the debt of the State of Tennessee so paid, are substituted and entitled to all the liens against said property for the payment of said debt that the State of Tennessee had or has by law.

And we do hereby, as provided and authorized in the Act of February 25th, 1869, and Acts amendatory thereof, in the name of the State of Tennessee, and in
486 her behalf, and for the considerations above named, assign and transfer to the said Adolphe Schreiber James Fentress and Lewis V. F. Randolph, trustees as aforesaid, all the debt and lien of the State of Tennessee, on the railroad and property heretofore owned in said State by the Mississippi Central & Tennessee Railroad Company, and on all the railroad and property in said State heretofore known as the Mississippi Central Railroad, now known as the Chicago, St. Louis and New Orleans Railroad, which said State has or had on
487 the same, by reason of the Internal Improvement laws of said State, and fact that said State had granted aid to said railroads under the statutes thereof, with all the rights, privileges and powers which said State has or had, for enforcing said lien, the object being to substitute the said trustees for the State, and to place them in the same position, and with the same rights which the State of Tennessee had previous to, and before the said payment and delivery of State bonds, with full power to enforce the same in any and every
488 manner in which the said State may or might.

This, the 28th of November, A. D. 1877.

In witness whereof I, James D. Porter, Governor of the State of Tennessee, have hereto set my hand, and caused
[L. S.] the great seal of the State of Tennessee

to be hereunto affixed, this the 28th of 489
November, 1877.

(Sgd.) JAS. D. PORTER,
Governor.

In witness whereof I, Chs. N. Gibbs, Secretary of State, have hereto set my hand and the great seal of the State of Tennessee, this November 28, 1877.

490

(Sgd.) CHAS. N. GIBBS,
Sec. State.

EXHIBIT NO. 6, TO ANSWER OF ILLINOIS CENTRAL R. R. CO.

NEW YORK, February 15, 1877.

To His Excellency JAMES D. PORTER,
Governor of the State of Tennessee.

SIR: On the 26th of December last, we had the 491
honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the representatives of owners of a large amount, and of conveying to you in same an expression of our confidence and belief, that a permanent adjustment of the debt on a basis equitable to the holders of it and honorable to the State was practicable, begging that your Excellency would recommend to the Legislature to appoint a commission to come to this city and confer with the creditors of 492
Tennessee, with the view of bringing about such an adjustment.

We now have the honor to acknowledge the receipts of communication to us severally, addressed by your Excellency, accompanied by a resolution of the Legislature of Tennessee, approved on the 27th January ultimo, in which the holders of the public debt of the

State are invited to submit to the General Assembly, through your Excellency, propositions for an adjustment of said debt, and at the same time to most respectfully express to your Excellency, and through you to the Legislature and people of Tennessee, our great regret and disappointment that the Legislature did not think it expedient to appoint a commission to come to New York to confer with the creditors of the State, for the purpose mentioned; because such a conference we still believe would have developed a plan of adjustment that, while doing equity to the creditors of Tennessee, would, by bringing her revenues and finances into harmonious and easy working order, restore her credit and again place it firmly on the high and solid ground it once occupied, offer encouragement to capital to seek employment within her borders in the development of her unsurpassed natural resources, and result in the greatest good to the people of the State generally, enabling them to transmit to posterity together with the good name which they had inherited, a heritage far richer than had come down to them from their fathers.

We have carefully considered the liabilities of Tennessee; we know that her great wealth of mine, field and forest are only in the infancy of development.

We know, also, how much the future development of the vast but now comparatively latent resources of the State depends upon a restoration of her credit and the re-establishing of her financial system upon a sound basis, and knowing moreover, that public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit and by giving her a healthy fiscal system, we beg leave to submit to your excellency, and through you to the Legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their public debt, and for its ultimate extinguishment in an easy, gradual and

feasible way—a way which, if adopted, we feel very 497
sure we hazard nothing in saying will be productive of the most beneficial results to the people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the debt will be the cordial co-operation of both debtor and creditor, and to what extent we propose that the public creditors of Tennessee shall contribute to its success.

We propose: 498

1st. That the revenue laws of the State shall be amended, so that the collection of taxes may be assured at the time or times when they become due, and that at the smallest possible cost to the tax-payers.

2d. That the reforms proposed and recommended to the Legislature by your Excellency, in regard to the cost of county criminal prosecution, be enacted into a law.

499

3d. That the expense of the State Government be reduced to as low figures as is consistent with the maintainance of its dignity.

4th. That the present rate of taxation be maintained, and other resources of revenue be not diminished.

5th. That the State levy annually a special tax of one mill on the dollar on taxable property, the proceeds of which in every year, together with any 500
surplus revenue, shall be used in the purchase, cancellation and destruction of the new issue of bonds which it is proposed herein to issue for existing bonds and past due coupons of July 1, 1877.

6th. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of

501 all past due coupons thereon, and of the coupons which will fall due on July 1, 1877, into new bonds of the State, bearing date July 1, 1877, and having fifty years to run to maturity, bearing interest for a period of five (5) years from their date at the rate of three (3) per cent. per annum; for a second period of five (5) years thereafter, interest at the rate of four (4) per cent. per annum; for a period of five (5) years from the termination of the last mentioned period, interest at the rate of five (5)
502 per cent. per annum, and thereafter and until maturity and payment, interest at the rate of six (6) per cent. per annum; interest on each bond to be payable semi-annually, on January 1 and July 1, in every year from and after its date, and the coupons evidencing it to be receivable by the State for all taxes and dues payable to the State, and bonds to be $100, $500, and $1,000 each.

The debt of the State, as may be readily ascertained,
501 will be within her control and easy power to manage and protect from the start, if, as we sincerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee, in acquiescing in this proposed plan of co-operation between them and the people of Tennessee for restoring the credit of the State and ultimately ex-
504 tinguishing her public debt, will voluntarily relinquish about seven millions of their claims against Tennessee, an amount equal to about one-third of the entire amount of the public debt.

On the other hand we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will only

produce the very moderate annual sum of $268,000 at 505
the present low valuation of property, will, by its silent but sure work, pay off the debt completly, while by its operation it will so reduce the amount upon which, under this plan, interest will require to be paid, that at the expiry of each period for an advance in the rate the reduced amount for which interest will have to be provided, and the certain increase in the value of property, will together work to make the present rate of taxation quite sufficient to meet all demands upon the State. 506

During the first fifteen years of the currency of the proposed new issue of bonds, we estimate that the proposed special tax for its ultimate payment will pay off between five and six millions of dollars in bonds, allowing 20 per cent. of the tax for its collection, and the expense of buying bonds with the proceeds.

When it is considered that this can be accomplished at so small an annual charge to the people of Tennessee, and that certain beneficial results to them are sure to follow, we have the greatest confidence that their loyal- 507
ty to Tennessee, their determination to preserve and perpetuate her honor and good name, will be sufficient to induce them to make the manly effort to that end of unitedly raising a one-mill tax on their property annually.

We are quite well aware of the partial failure of the crops in Tennessee in the years 1873 and 1874, and of the depressed condition of business, and of all industries in the State, but throughout the country there exists the same depression—stagnation. 508

In full recognition of this depression and stagnation, which there is every reason for believing will soon give place to better times, we have in the plan herein submitted for a re-arrangement of the finances of Tennessee made her obligations within her means and evident ability to meet now.

With the existing rate of taxation, and the proposed

special tax for the extinguishment of the debt, which together will make, a five mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee:

In Arkansas	the rate is	10 mills,
Mississippi	"	$6\frac{1}{2}$ "
Alabama	"	7 "
Georgia	"	5 "
North Carolina	"	$3\frac{3}{10}$ "
South Carolina	"	12 "
Virginia	"	5 "
Kentucky	"	$4\frac{1}{2}$ "

In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to make it possible to avail of the proposed co-operation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of the credit on a plan so favorable as we have herein outlined, and we have the honor to be

Your obedient servants,

GEORGE SMITH, of London, England,
by Geddes & Smith, agents, &c.

BROWN BROTHERS & Co., Agents.

DREXEL, MORGAN & Co., Agents.

E. D. MORGAN & Co.,
Agents and owners.

JAMES G. KING'S SONS,
as Agents for Bondholders.

WARD, CAMPBELL & Co., Agents.

G. W. STANTON, Jr.

P. GEDDES.

We concur in the foregoing. 513

CALVIN STEVENS,
by C. Amory Stevens, Att'y.
J. V. CLARK, Pres't, Chicago,
per Thos. G. Robinson.
WM. G. CREAMER, 96 John st.
CHAS. J. HINE, New York City.
A. ISELIN, as Att'y, New York.
W. R. JENKINS, New York.
MRS. JOSEPHINE S. NEWCOMB, 514
by H. Pomeroy, Att'y.
54 Broad street.
GEORGE WATSON, Chicago,
per James H. Smith.
JNO. H. MACEY, Pres't.
HENRY E. JOHNSTON, Baltimore.
JOHNSTON, BANKHEAD & Co.,
Baltimore, Agents.
THOMAS F. ANDREWS, Baltimore.
M. ABRAMS, Baltimore. 515
WILLIAM DE GORY, Baltimore.
SAMUEL L. PETERS, Baltimore.
WILSON, COLSTON & Co.,
Agents, Baltimore.
JOHN S. GITTINGS, Baltimore.

RESPONDENT'S EXHIBIT No. 2.
W. H. D. L., Sp'l Ex'r.

NEW YORK, Feb. 23d, 1877. 516

His Excellency,
JAMES D. PORTER,
Governor of Tennessee:

SIR:—

We beg leave to call your attention to the enclosed telegram to the *New York Herald*, from its Nashville correspondent, cut from this morning's issue of the

517 *Herald*, and to confirm our dispatch to you of this morning by telegraph, in relation thereto, as follows.

"Proposition from large and influential New York "and Baltimore bondholders expressed to you on "Wednesday, and should be received to-day. Bond- "holders here know nothing whatever of a meeting, or "of resolutions, reported in *Herald* to-day, as having "been sent to you, and by you transmitted to Legisla- "ture, with a special message.

"This may be a movement designed to destroy or
518 "embarrass any proper adjustment."

No meeting of bondholders of Tennessee, so far as we are aware or can ascertain, has either been called or held in this city. Neither have we heard, at any time, of a purpose to call or hold such a meeting, nor of a purpose or desire, on the part of real holders of Tennessee bonds, to take any action whatever, outside of what has been taken through and in the communication which we, with others, had the honor to address to you under date
519 the 15th current. It could hardly be possible to call or hold a meeting here of Tennessee bondholders without our knowing or hearing about it. Such being the case, we thought it our duty to telegraph to your Excellency as we did this forenoon. It occurred to us that possibly an attempt to mislead your Excellency and the people of Tennessee as to the sentiments and wishes of the real holders of the indebtedness of the state had been made, akin to the attempt made last year to create a false impression, through a letter to the State Treasurer, to
520 which the name of one of the Astors had been forged.

The debtors of the state, with all of which she has been extremely liberal, even to the injury of her own credit, many here believe, are supposed to be antagonistic to the consummation of any plan for the restoration of Tennessee credit now, the complete prostration of which, it is supposed, would be for their immediate pecuniary advantage. This view, if entertained by

any of the debtors of the state, is unsound. For, with every decline in the credit of the state, their credit, inevitably suffers. 521

But to remove this cause of a real or apparent antagonism between the debtors and creditors of the state, and also to remove—which is of immediate and great importance—an obstacle which is calculated to prevent or, at least, hinder the people of Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the state, and place it on a solid basis, we would respectfully suggest to your Excellency that the debtors of the state be required within a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the state as now they may do, after which time only such advances as were specifically made to each to be receivable in payment or cash—this is to apply to principal and interest. 522

We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the creditors of the state would regard such a step as one taken in the right direction. 523

And we remain

Your Excellency's obedient servants,

GEDDES & SMITH,

E. D. MORGAN & CO.

The views above given, we beg to add, are for your own personal consideration.

G. & S. 524

525 EXHIBIT No. 7.

TO ANSWER OF ILLINOIS CENTRAL RAILROAD COMPANY.

[Proposition of the New York Committee.]

To the Honorable the General Assembly of the State of Tennessee:

GENTLEMEN:—You have already been advised of a public meeting of friends of the Southern States
526 held in the City of New York on the 20th day of January, ultimo, of which the Hon. William Cullen Bryant was Chairman having for its object, "An effort to bring about through the intervention of a committee of disinterested arbiters, between the States and their creditors, a readjustment of the debts of the several Southern States, which are in default in the payment of the interest upon their obligations," and that the undersigned were invited to constitute such committee and were requested "To confer with the authorities of
527 each of the States in arrears and with their creditors, and after weighing all the facts bearing upon the matter, to devise and suggest a feasible plan for the readjustment of the debts of those upon a basis which should be fair and just to, and considerate of, all parties concerned."

In response to communication from the chairman of that meeting to His Excellency Governor Porter, and in accordance with his recommendation, the Legis-
528 lature of Tennessee has been pleased to appoint a delegation to confer with us on the subject, consisting of the following gentlemen, viz: The Honorables

JOHN H. SAVAGE,
G. W. MARTIN,
JESSE ARLEDGE,
W. E. TRAVIS, and
LEWIS SHEPHERD.

After a prolonged discussion with your committee, 529
when all the circumstances under which the debt was incurred, the peculiar condition of affairs in the state, together with its present ability and its future resources, were most fully and carefully considered, the undersigned have come to the deliberate conclusion that after adding all the arrears of interest and the interest to accrue up to July 1, 1877, the then aggegate amount of the state debt should be readjusted by the issue of new bonds at the rate of sixty (60) per cent. of the total amount, *i. e.*, for every sum of one thousand 530
($1,000) dollars then due, new bonds should be given in exchange and full settlement for six hundred ($600) dollars, or for proportionate amounts.

The new bond to bear interest at the rate of six per cent. per annum from the 1st of July, 1877, payable semi-annually in the city of New York, the first payment of interest to be made on the 1st January, 1878, and that the principal be made payable also in New York, in thirty years from date. The interest coupons 531
to be received by the State for all taxes due to it.

This compromise the undersigned consider, under all the circumstances and necessities of the case, to be just and fair, both to debtor and to creditor.

To facilitate and promote the proposed exchange, which it is assumed the creditors will generally accept, this committee recommend that a new and uniform issue of coupon bonds of the required amount, in denominations of one thousand, five hundred, and one 532
hundred dollars for convenient exchange, be prepared, ready for delivery from time to time as wanted, in the city of New York; and that they be there held, subject when issued to the countersign of an agent appointed under their supervision, if so desired, with the approval of the Governor of the state. The new bonds to b registered in the name of its owner if preferred, and

533 the old bonds, as exchanged, to be canceled and immediately returned to the Treasurer of the State.

In the conclusion to which this committee have, with much deliberation arrived, they have not lost sight of the fact that a sovereign State, although beyond the reach of legal coercion in the fulfillment of its obligations, is for that very reason under stronger bonds to maintain its credit inviolate. Nor have they been unmindful of the honorable character and unblemished
534 credit which the great State of Tennessee has always enjoyed in the markets of the world, of her reputation for the possession of large resources, nor of the humiliation she must consequently endure by any compromise whatever of her legal obligations. All these considerations have been fully weighed, and they have induced this committee to carefully inquire whether it was not expedient for them to recommend, instead of so large a reduction of the principal of the debt, a concession of a few years, in the rate of interest as proposed in a plan submitted to the Governor by holders of a
535 large amount of bonds, in the belief which is generally entertained among the creditors, that a gradual recovery of wealth would accrue to the State and enable her at an early day to resume payment in full. This mode of adjustment would be obviously more gratifying to State pride, and would also afford greater present relief, and it would certainly be more acceptable to the majority of bondholders.

But after attentively considering the statements of
53 your delegation, respecting the sad results of the war, the social derangement and general impoverishment it has entailed, and the wide-spread disorganization existing in all the industries of the people throughout the State, we have been constrained to the decision that a summary reduction of the debt, even to the large extent indicated, is the best course for all parties concerned, and that, unless the Legislature shall now see

its way clear for a settlement more favorable to the 537
bondholders, it is both its duty and its policy to adopt the award which this committee most respectfully and conscientiously tender to them and to their creditors, as the result of their best judgment.

This committee regard it as most important and just to all the creditors of the State, that the bonds issued under the proposed adjustment, shall be uniform in terms and conditions of payment, and in their general appearance; and they also express the conviction that the State will be able, at an early day, to provide a 538
fund, however small, in excess of the interest, to be used for the gradual extinguishment of the debt. This, with the constitutional prohibition, which they are informed is now existing, that "no debt can be incurred by the State for the creation or in aid of any public improvement," will give augmenting value to the new bonds, and so far tend to mitigate the loss which the creditors incur.

The consideration that the decision of this momentous question by a State so distinguished in character 539
and position as Tennessee, will exert unbounded influence upon the other States, gives immeasurable responsibility, both to this award, and its adoption. Yet the committee confidently present it with the belief that while it is best for her creditors, it is also best for the State, and that it will remove the greatest obstacle that now stands in the way of the prosperity of the whole nation.

And they have the honor to be,

Gentlemen, 540

Your obedient servants,

GEO. S. COE,
J. D. VERMILYE,
B. B. SHERMAN,
B. B. COMEGYS,
ENOCH PRATT,
Committee.

541 EXHIBIT No. 8.—TO ANSWER OF ILLINOIS CENTRAL R. R. Co.

(Private.) NEW YORK, Aug. 1, 1877.

HON. JAMES L. GAINES,

Comptroller,

Nashville.

Dear Sir:—I think that I may now safely say to you confidentially, that the parties in interest will be pre-
542 pared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so.

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State, which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned, to assure the people of Tennessee that you were
543 not here to pay off the State debt, or anything of that kind.

I have not heard from Mr. Smith, and am, therefore, not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which, I think, might be gotten up, of-
544 fering to settle at say 75per cent. of principal and interest in 6 per cent. bonds, coupons receivable for all taxes and dues to the State. If any hope were held out that a settlement can be effected at the equivalent of our proposition, say 75 c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and, I think, that with careful handling, it could be carried. Of course, there are always some

who hold back, but, I think, that the great majority 545
would take 75 per cent. under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts, the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would 546
unite in an effort to bring about a compromise on the basis of 75 per cent. I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and bondholders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally I have worked hard to save the remnant
of Tennessee's once good credit, and I make this last 547
effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

If you think so advisable you may convey to the Governor, at your convenience, the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours
P. GEDDES,
P. O. Box 936.

548

EXHIBIT No. 9.

To Illinois Central R. R. Co. Answer.

(Private.) New York, August 27, 1877.

Hon. James L. Gaines,
Nashville.

My Dear Sir: I have just had an interview with

549 Mr. Osborn, who reports that in thirty days the parties in whose interest the Mississippi Central was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee on the Miss. Central, and that they now think they can pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her
550 creditors too, for that matter, from a very troublesome disorder.

Although you do not in your note of the 8th current give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee, who must be still in the majority, would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

551 The outstanding bonds of Tennessee are mainly held by investors, by trustees, and trust institutions. The "margins" of speculators in and out of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now investors, and parties, and institutions holding in trust, prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving
552 lower rates of interest and smaller dividends on their investments than they had been accustomed to. Many of them, judging by the large subscriptions to Government four per cents. recently, have come apparently to the conclusion that lower rates of interest than formerly prevailed will hereafter permanently prevail. This is the mood in which they now appear to me to be, and it has suggested the idea that advantage might

possibly be taken of so favorable a time and circum- 553
stances by the friends of Tennessee to bring about a compromise of the rate of interest on her debt which would enable her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows :

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable semi-annually January 1 and July 1 in each year, coupons to be at- 554
tached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State, and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six months' notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise ; but if I get from you and the Governor encouragement that if such a 555
proposition were made by the holders of more than half the debt, it would be accepted, I will exert myself with Mr. George Smith and other well-known large holders to make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Goverernor Porter and the other friends of State credit to 556
give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

557 Let me hear from you on receipt and write further afterward.

Truly yours,

P. GEDDES.

EXHIBIT NO. 10,

TO ANSWER OF

ILLINOIS CENTRAL RAILROAD COMPANY.

558

CHICAGO, ST. LOUIS & NEW ORLEANS R. R. CO.

SECOND MORTGAGE FOR $8,000,000,

TO

W. K. ACKERMAN, STUYVESANT FISH,

Trustees.

December, 1st, 1877.

559 THIS INDENTURE, made this First day of December, Anno Domini one thousand eight hundred and seventy-seven.

Between the Chicago, St. Louis and New Orleans Railroad Company, of the First Part; the New Orleans, Jackson and Northern Railroad Company, of the Second Part; the Central Mississippi Railroad Company of the Third Part; and W. K. Ackerman of Chicago, in the
560 State of Illinois; and Stuyvesant Fish of New York, in the State of New York, Trustees, of the Fourth Part:

Whereas, a corporation known as the New Orleans, Jackson and Great Northern Railroad Company, organized under the laws of the States of Louisiana and Missippi, heretofore owned and operated a certain railroad extending from the City of New Orleans in the State of Louisiana, to Canton, in the State of Mississippi, to-

gether with a branch or branches thereof, and with the 561
right to construct and operate other branches and extensions, and with depot grounds, buildings and other property to said railroad appertaining; being part of the railroad and property hereby intended to be mortgaged and conveyed;

And whereas, the said New Orleans, Jackson, and Great Northern Railroad Company, on or about the twefth day of June, 1856, by a deed or instrument known as its First Mortgage, mortgaged and conveyed 562
to one James D. Denegre, its Road aforesaid, built and to be built, from the City of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, with the appurtenances, to secure the payment of its Bonds, issued or to be issued, to an extent not exceeding Three millions of dollars;—certain of which Bonds are still outstanding and said first mortgage in force;

And whereas, subsequently to the making of said first mortgage, to wit: on the first day of October, 1860, 563
the said New Orleans, Jackson and Great Northern Railroad Company, for the purpose of securing the payment of an additional issue of its corporate Bonds, to a farther amount not to exceed three millions of dollars, did also mortgage and convey to the said James D. Denegre, its road aforesaid, together with the appurtenances, by a second mortgage or deed of trust;—certain of which Bonds are still outstanding and said second mortgage in force;

564

And whereas, afterwards the said New Orleans, Jackson and Great Northern Railroad Company failed to pay certain matured coupons or interest warrants upon certain of the Bonds secured by its said first and second mortgages, and certain of the said coupons, with all liens, rights and equities attaching thereto were purchased by third parties;

565 And whereas, the said New Orleans, Jackson and Northern Railroad Company, party hereto of the second part, on the fifteenth day of August, 1877, made an issue of its corporate Bonds, known and described as Matured Coupon Bonds, to the extent of five hundred thousand dollars, to provide for the postponement of the payment of said coupons thus due and unpaid upon Bonds secured by the first and second mortgages of the New Orleans, Jackson and Great Northern Railroad Company, and to further secure said Matured Coupon
566 Bonds did mortgage and convey, to William H. Gebhard and Lewis V. F. Randolph of the City of New York, the line of Road from the City of New Orleans to Canton in the State of Mississippi, which had been theretofore owned by the New Orleans, Jackson and Great Northern Railroad Company as aforesaid; which last said Bonds and mortgages are still outstanding;

And whereas, a certain corporation known and designated as the Mississippi Central Railroad Company
567 was chartered by the State of Mississippi, by an act, past the tenth day of March, 1852; and afterwards, a certain other railroad corporation, known and designated as the Mississippi Central and Tennessee Railroad Company was chartered by an act of the Legislature of Tennessee, passed on the thirtieth day of November, 1853, and was authorized by said act to consolidate and form one corporation with said Mississippi Central Railroad Company;

568 And whereas, the State of Tennessee, under and by virtue of the statutes of the same, loaned to the said Mississippi Central and Tennessee Railroad Company, or advanced for its benefit, Bonds of said State, to the aggregate amount of five hundred and seventy-four thousand dollars, by virtue of which Bonds and upon the issuance thereof pursuant to the statutes authorizing the same, the said State of Tennessee became in-

vested, without deed from the said Railroad Company, 569
with a lien in the nature of a mortgage upon the entire Road built or to be built by the said corporation in the State of Tennessee, with all its appurtenances, prior to any mortgage made or to be made by the said corporation, as security to indemnify and save harmless the said State, on account of the issuance and for the payment of the principal and interest of said State Bonds so issued to said corporation;

And whereas, afterwards and in pursuance of certain 570
acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, the said Mississippi Central, and Tennessee Railroad Company and the Mississippi Central Railroad Company were consolidated and made into one corporation, under the name of the Mississippi Central Railroad Company, by the agreement and consent of the Stockholders thereof, and authorized to continue and complete the construction of the Railroad from Canton in the State of Mississippi, through the States of Tennessee and Kentucky, and to operate the 571
same, and the said corporation, thereafter known as the Mississippi Central Railroad Company, did proceed to construct and to operate said Railroad;

And whereas, under and by virtue of the acts aforesaid, and other acts of the said State of Tennessee, other Bonds of said State to the amount of $550,000 were issued to the said Mississippi Central Railroad Company, and under and by virtue of said statutes a lien was reserved to the said State upon the entire Road in 572
the State of Tennessee, with all its appurtenances, and all property owned by the Company, within the limits of said State, in the nature of a mortgage, without deed, prior to the lien of any mortgage executed or to be executed by the said Company, to indemnify and save harmless the said State of Tennessee, for the issuance and against the payment of the principal and interest

of the last mentioned amount of five hundred and fifty thousand dollars of State Bonds, so as aforesaid issued to or for the benefit of said Mississippi Central Railroad Company.

And whereas, said Mississippi Central Railroad Company having been unable to pay and re-imburse to the said State of Tennessee, a certain amount of the interest which had accrued, and which the State had paid upon its Bonds so as aforesaid issued to the Mississippi Central and Tennessee Railroad Company, certain other acts were passed by the Legislature of said State by which the amount due from the Mississippi Central Railroad Company for such interest, having been paid by the said State by issuing other of its Bonds, was converted into a charge as principal, and in all respects the said State became and was entitled by virtue of the payment thereof, and issuance of said bonds therefor, to the same rights and liens for the same which were created by the acts authorizing the original issue of Bonds to the said Railroad Company; which interest, so converted into principal, and for which the said State of Tennessee, became and was entitled to a like first lien upon the property of the Mississippi Central Railroad Company within said State, amounts to seventy-five thousand one hundred and eighty dollars;

And whereas, by virtue of the payments or advances aforesaid, the State of Tennessee became entitled to, and held a first and paramount lien in the nature of a mortgage on all the property which was of the Mississippi Central Railroad Company, so called after the consolidation aforesaid, within the said State of Tennessee, to the extent and amount of one million one hundred and ninety nine thousand and one hundred and eighty dollars besides interest;

And whereas, by an Act of the Legislature of the

said State of Tennessee, passed the twenty-fifth day of 577
February, 1869, and by other acts amendatory thereof and supplemental thereto, it was, among other things enacted, that the respective railroad companies, or either of them that had created indebtedness to the said State, were authorized to repay any amount of the principal of said indebtedness in the bonds of the State, and that any such railroad company repaying any such indebtedness, might issue bonds to an equal amount with the bonds of the State paid and delivered up as thereby provided, which said bonds so issued in lieu of 578
any amount of said State bonds, should be certified by the Comptroller of said State, and should possess a lien pro rata in amount and of equal validity and effect with the State indebtedness upon such railroad, and all its property within said State of Tennessee; and farther, that any person or persons, with the consent and approbation of any railroad company which should be indebted to the State of Tennessee, and upon whose property the State of Tennessee might hold a lien, might pay the said State debt, so far as the State is 579
concerned, in the bonds of the State, or any coupons of bonds at par, and the person or persons so paying the debt of such railroad company with the consent of such company, should be entitled to have and hold all the lien or liens which the State of Tennessee had or has, upon said railroad company or its property, and all the right and power to enforce the same belonging to such State;

And whereas, in and by the Decree of the Circuit 580
Court of the United States for the District of Tennessee, made and entered at Memphis, on the sixth day of January, 1877, in a suit in Chancery, commenced by the Trustees of the consolidated mortgage of the Mississippi Central Railroad Company hereinafter mentioned, for the foreclosure of said mortgage, it was by the said Court ordered, adjudged, and decreed that

581 the said Trustees and their assigns were entitled, as representing the said Mississippi Railroad Company, to settle the claims and take and receive the transfer of the lien of the State of Tennessee;

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company, party of the first part hereto, has become the assignee and grantee of the said Trustees in said Decree named, and all of their rights and privileges in that behalf, and also the successor as
582 hereinafter stated of said corporation known as the Mississippi Central Railroad Company, and of all its powers, rights, privileges and franchises, with the right in case of payment of said Tennessee Bonds to issue and substitute for the same its own bonds with all the liens and rights held by the State of Tennessee;

And Whereas, afterwards, the said Chicago, St. Louis and New Orleans Railroad Company, party of the first part, made and executed its certain indenture
583 of mortgage, dated the eighth day of November, 1877, to Adolph Schreiber, James Fentress and Lewis V. F. Randolph, and hereinafter more particularly referred to, and under and in pursuance of the terms and conditions of the said mortgage, did issue and set apart, in order, under the said acts of the State of Tennessee to provide for and to be substituted in place of the bonds of the State of Tennessee issued to the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Rail-
584 road Company as aforesaid, one thousand one hundred and ninety-nine bonds, issued under said mortgage, of one thousand dollars each, numbered from one to number one thousand one hundred and ninety-nine inclusive, which were thereafter used to provide for and liquidate said indebtedness to the State of Tennessee, and were substituted for an equal amount of indebtedness to said state and of the bonds of said state paid and

delivered up, under and according to said statutes of 585
the State of Tennessee, and were registered and certified, pursuant to the statutes of the State of Tennessee aforesaid, by the Comptroller thereof, and thereby became entitled to and now hold a lien, in the nature of a first mortgage, upon the property by this indenture mortgaged and conveyed, and all the railroad property and franchises which were of the said Mississippi Central Railroad Company, and are now owned and operated by the said Chicago, St. Louis and New Orleans Railroad Company, within the State of Tennessee, 586
with all rights, privileges and liens given to said state by its statutes aforesaid, and all powers to enforce the same originally residing in said state, the debt to said state, principal and interest, having been paid in full.

And whereas, said Mississippi Central Railroad Company, on or about the first day of November, 1854, executed a mortgage to Charles Butler, Azariah C. Flagg and Jacob Thompson, to secure its corporate bonds issued and to be issued, to an amount not to exceed one 587
million three hundred and fifty thousand dollars, whereby it mortgaged and conveyed all its railroad property and appurtenances in the State of Mississippi, which mortgage is known as its first mortgage, and is still outstanding with certain of the bonds secured thereby.

And whereas, afterwards, on or about the first day of November, 1865, the said Mississippi Central Railroad Company, executed a second mortgage to Jacob S. 588
Rogers, M. P. Mathison and William L. Sharkey to secure the payment of an additional issue of its corporate bonds, to an amount not to exceed two millions of dollars, which said second mortgage is still outstanding, with certain of the bonds secured thereby.

And whereas, the said New Orleans, Jackson and Great Northern Railroad Company, hereinbefore men-

589 tioned, made and executed a certain other mortgage or deed of trust, known and designated s aa consolidated mortgage, upon its entire railroad and property, under which certain bonds were issued; and the said Railroad Company having made default in the payment of interest on its said last mentioned bonds, and thereby the principal thereof, by virtue of the terms and condition of said bonds and of the said mortgage securing the same, having become absolutely due and payable, such proceedings were had for the foreclosure of said
590 mortgage, that the railroad property, rights and franchises of the said New Orleans, Jackson and Great Northern Railroad Company were sold, under and by virtue of the power in said mortgage or deed of trust contained, and of a decree in that behalf rendered by the Circuit Court of the United States for the District of Louisiana, and purchased by and on behalf of certain holders of the bonds of said Company, issued under said consolidated mortgage, pursuant to a purchasing agreement dated the thirteenth day of March,
591 1877:

And whereas, afterwards, the said bondholders and purchasers, under said agreement and by virtue of statutes of the States of Mississippi and Louisiana, did organize and incorporate themselves by the corporate name and title of the New Orleans, Jackson and Northern Railroad Company. and said last named Company received a deed and transfer of said Railroad, and became the owner under and according to the statutes
592 aforesaid, of all the rights, franchises, railroad, rights of way, superstructure and other property which had been of the New Orleans, Jackson and Great Northern Railroad Company, with all privileges and immunities appertaining to the property or franchises so sold and purchased, and all powers and franchises in as full and complete manner as the said New Orleans, Jackson and Great Northern Railroad Company was entitled to

the same by law, and as fully and perfectly as if the 593
said New Orleans, Jackson and Northern Railroad Company had been granted a charter of incorporation in the very words of the act or acts under which the New Orleans, Jackson and Great Northern Railroad Company existed, owned and operated its said railroad, and held and exercised its rights, privileges and franchises.

And whereas, also, the said Mississippi Central Rail-
road Company, hereinbefore mentioned, for the pur- 594
pose of completing and extending its railroad to the Ohio River, made and executed a certain consolidated mortgage or deed of trust on or about the first day of May, one thousand eight hundred and seventy-two, under which consolidated mortgage or deed of trust, certain bonds or obligations of the said Mississippi Central Railroad Company were issued ;

And whereas, the said Mississippi Central Railroad
Company afterwards failed and made default in the 595
payment of its coupons for interest upon said consolidated mortgage bonds ; and thereafter, according to the provisions of said bonds, and of said mortgage or deed of trust securing the same, such proceedings were had that under and by virtue of the power created and conferred by the said mortgage or deed of trust, and in pursuance of degrees rendered in the Circuit Court of the United States in the Districts of Tennessee, Mississippi and Kentucky, all the property described in said
decrees, and in the deed of trust aforesaid, being the 596
railroad of the said Mississippi Central Railroad Company, extending from Canton in the State of Mississippi, through the States of Mississippi, Tennessee and Kentucky, to a point on the Ohio River opposite Cairo, with all rights and appurtenances thereto belonging, and all the franchises, rights and privileges of the said corporation, were sold by the trustees in said mortgage or

597 deed of trust mentioned, under the direction of a Master appointed by the said Court, and purchased by certain holders of the bonds issued under the said mortgage, pursuant to the purchasing agreement of the thirteenth day of March, 1877, hereinbefore mentioned.

And whereas, afterwards the said bondholders and purchasers, in pursuance of said agreement and by virtue of acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, organized and be-
598 came incorporated for the purpose of holding, owning and operating the said railroad, under the name, title and designation of the Central Mississippi Railroad Company, and by virtue of the said acts of the Legislature aforesaid, and of deeds and conveyances, became, and were invested with the absolute title to said railroad and property, real and personal, and the same right to operate the said railroad in the said States as the Mississippi Central Railroad Company had, and with all rights, privileges and immunities appertaining
599 to the property and franchises so sold and purchased, and granted and conveyed to them, as fully and completely as the said Mississippi Central Railroad Company was, or had been, and with all the rights, privileges, immunities and franchises held by the said Mississippi Central Railroad Company, by or under any acts of the Legislatures of the States aforesaid, as fully and perfectly as if the said Central Mississippi Railroad Company had been granted a charter of incorporation in the very words of the acts under which
600 the Mississippi Central Railroad Company had existed and claimed and exercised such powers and privileges;

And whereas, for the better and more convenient operation of the said railroads, and the protection of the parties interested therein, and in the Bonds secured by said prior mortgages thereon, and in order to form one continuous line of railway from the City of New Orleans aforesaid, to the Ohio River opposite the termin-

us of the Illinois Central Railroad at Cairo, under a sin- 601
gle control and ownership, it was determined and agreed
to consolidate and unite the said two railroad compan-
ies known as the New Orleans, Jackson and Northern
Railroad Company, and the Central Mississippi Rail-
road Company, which had so as aforesaid become the
owners of the said two railroads, together constituting
such continuous line from the City of New Orleans to
the Ohio River.

And whereas, an agreement for such consolidation,
dated the seventh day of November A. D 1877, has 602
been dnly executed by the said two corporations, and
ratified and assnted to by the stockholders thereof, and
has become valid, final and effectual in all the States
in which the same is authorized and permitted by the
statutes thereof, and is intended to be perfected, rati-
fied and confirmed in all the states through which the
said Railroad passes, in order that the said two corpo-
rations may become finally and effectually consolidated
in the corporation known as the Chicago, St. Louis and
New Orleans Railroad Company, the party hereto of 603
the first part;

And whereas, by virtue of such agreement of consol-
idation, the corporation party of the first part to these
presants, and known as the Chicago, St. Louis and New-
Orleans Railroad Company, a corporation formed by
the union and consolidation of the parties of the sec-
ond and third parts hereto, is intended to own and op-
erate the Railroad so as aforesaid extending from the
City of New Orleans, to the Ohio river opposite Cairo,
with all branches and extensions thereof, made or to be 604
made, and with all the appurtenances, franchises and
rights of way appertainiug thereto, which were of the
said two corporations so consolidating, or which here-
tofore belonged to the corporations hereinbefore men-
tioned, known as the New Orleans, Jackson and Great
Northern Railroad and the Mississippi Central Rail-
road Companies;

605 And whereas, the said Chicago, St. Louis and New Orleans Railroad Company, on or about the eighth day of November, 1877, made and executed a mortgage or deed of trust to Adolphe Schreiber, James Fentress and Lewis V. F. Randolph, to secure Bonds to be issued by said Company to the amount of thirteen millions of dollars, including the Bonds hereinbefore mentioned, which are substituted for the Bonds of the State of Tennessee, and also Bonds which are reserved and intended to be issued to pay or provide for
606 the Bonds issued under the several prior mortgages upon the said several railroads hereinbefore referred to, in which said last mentioned mortgage the said parties of the second and third parts united for more complete assurance, which said mortgage is intended finally to become and be the first, and this Indenture the second mortgage upon the Railroad property and franchises of said party of the first part;

And whereas it was stipulated by the agreement among the holders of Bonds issued under the consoli-
607 dated mortgages of the New Orleans, Jackson and Great Northern Railroad Company, and the Mississippi Central Railroad Company, made the thirteenth day of March, 1877, for the purchase of said Railroads under the foreclosure of said mortgages, that upon the purchase and reorganization of said Railroads and the consolidation of corporations formed by the purchasers thereof into one corporation, such consolidated corporation should issue to every holder of a Bond secured by either the consolidated mortgage of the New Orleans,
608 Jackson and Great Northern Railroad Company, or of the Mississippi Central Railroad Company, becoming a party to said purchasing agreement, and complying with its terms, a Bond of like amount, of the tenor hereinafter set forth, and secured by a second mortgage upon the Railroad and property of said consolidated corporation, being the party of the first part hereto, embracing all the Railroad and property which was

formerly owned by said two first mentioned original 609
corporations and which passed to the purchasers thereof, and the corporations by them formed, being the parties of the second and third parts hereto;

And whereas, to carry out and effectuate said plan and agreement, and to represent, pay and satisfy said purchasers for their interest in said purchase, and also to provide the means to complete, and equip, and put in perfect condition, as far as may be, the said Railroad and property now owned and 610
to be operated by said party of the first part, the said Chicago, St Louis and New Orleans Railroad Company, hath agreed and resolved by its Board of Directors, pursuant to the power and authority conferred by the statutes of the States of Kentucky, Tennessee, Mississippi and Louisiana, and by its articles of consolidation and organization, to issue its Bonds to an amount not exceeding eight millions of dollars, being eight thousand bonds of one thousand dollars each, bearing an interest not exceeding six per cent. per annum, pay- 611
able for the first five years only from and out of the net earnings of said Railroad after all expenses and prior charges are satisfied, according to the tenor of the Bonds and interest warrants hereinafter recited, of which seven thousand two hundred and seventy-nine (7,279) Bonds shall be issued for, and may be used to take up said Consolidated mortgage Bonds of the New Orleans, Jackson and Great Northern and Mississippi Central Railroad Companies, as aforesaid, and to reimburse the holders thereof becoming purchasers under the agree- 612
ment aforesaid; and all the remainder of said Bonds, being all of said Bonds not used and required for that purpose, are to be used and applied for the general benefit of said party of the First Part;

And whereas, to make the assurance of this mortgage and deed of trust complete, and to remove any question

that it will create a perfect lien upon the whole of said line of Railroad, from New Orleans to the Ohio River as aforesaid, and upon all the property, estate, railroad, franchises and interests which were at any time heretofore owned, exercised or operated by the said New Orleans, Jackson and Great Northern Railroad Company, or said Mississippi Central Railroad Company,—subject only to the first and second mortgages of the New Orleans, Jackson and Great Northern Railroad Company, the first and second mortgages of the Mississippi Central Railroad Company, and matured coupon mortgage of the New Orleans, Jackson and Northern Railroad Company, and the first mortgage of the Chicago, St. Louis and New Orleans Railroad Company aforesaid, including the lien of the Bonds substituted for Tennessee Bonds, the corporations known as the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company, parties of the second and third parts hereto, have agreed, and the respective Boards of Directors thereof have authorized and directed, that the said Corporations should unite in the execution of this mortgage or deed of trust, to secure the Bonds to be issued as hereinbefore mentioned;

Now this indenture witnesseth that the said parties of the first, second and third parts, in consideration of the premises, and for securing payment of the bonds to be made and executed to the amount of eight millions of dollars, in lawful money of the United States, as hereinbefore mentioned, and the interest to accrue thereon, and in consideration of the sum of ten dollars lawful money of the United States, unto them well and truly paid by the parties of the fourth part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, confirmed, assigned, transferred, and set over, and by these presents do grant, bargain, sell, release, confirm, assign, transfer and set over unto the said parties of the fourth part, and their lawful

successors in the trust hereby created, all and singular 617
the Railroad aforesaid, with its appurtenances, depots,
depot grounds, branches, furniture and equipments,
and all and every right, title or interest which said
parties of the first, second, or third parts, or either of
them, had or has, or shall hereafter acquire in, or to the
same, being the line of Railroad formerly known, in
part as the New Orleans, Jackson and Great Northern
Railroad, and in part as the Mississippi Central Rail-
road, and subsequently, by the consolidation of said
two Companies, as the New Orleans, St. Louis and 618
Chicago Railroad, and now intended to be owned and
operated as one continuous line of railroad from New
Orleans to a point at or near Fillmore upon the Ohio
River opposite Cairo, by the said party of the first part,
with all its branches, extensions and appurtenances, and
with all the real estate now owned by the said party of
the first part, or by the said parties of the second and
third parts, or either of them, or which may hereafter,
for the purposes of said railroad, be owned or acquired
by said party of the first part, and all rights of way, rails, 619
tracks, workshops, machinery, depots, depot grounds,
improvements, tenements, and hereditaments, now
owned by said parties of the first, second and third
parts, or either of them, or hereafter to be acquired by
said party of the first part, its successors or assigns, for
the construction, operation and management of the said
railroad; together with all rolling stock, locomotives
tenders, cars and equipments, machinery, tools, imple-
ments and materials, and all and singular the other per-
sonal property of every kind, nature and description, 620
belonging to or hereafter to acquired by said party of
the first part, or the said parties of the second or third
part, now or hereafter in use, or intended for use upon
the said railroad, or in connection with the proper
equipment or operation of the same, and also all and
singular the corporate rights, powers and privileges and
franchises of the said party of the first part, now held,

possessed or which may hereafter be acquired for the construction, maintenance and operation of said railroad, or connected with or relating to the same, and all the like corporate powers, rights, privileges and franchises of the said parties of the second and third parts, or either of them, so held and possessed, or which may be acquired by them or either of them, with all rights, privileges or appurtenances whatsoever, affecting any of the hereby granted and mentioned premises and estates, or thereunto belonging, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, or of the said parties of the second and third parts, either at law or in equity, of, in and to the same and every part and parcel thereof; subject, however, to the several mortgages and incumbrances upon the said premises, or certain portions thereof hereinbefore specified and enumerated, and to the lien of the same and of each of said mortgages—that is to say to the lien of the Bonds substituted for the Bonds of the State of Tennessee upon that part of the said Railroad and property in that State; to the first and second mortgages of the former New Orleans, Jackson and Great Northern Railroad Company, and the matured coupon mortgage of the New Orleans, Jackson and Northern Railroad Company; and to the first and second mortgages of the Mississippi Central Railroad Company, upon so much of said Railroad and property as was mortgaged by said corporations respectively, and to the first mortgage made the eighth day of November, 1877, by said party of the first part, and united in by said parties of the second and third parts:

To have and to hold the same, with the appurtenances, subject as aforesaid, unto the said parties of the fourth part, their successors and assigns, in trust for the use, benefit and security of the several persons and their successors, administrators, executors or assigns, who shall hereafter become the owners and holders of any of the bonds to the amount of eight millions

($8,000,000) dollars intended to be hereby secured, sub- 625
ject, however, to the right of the party of the first part, its successors and assigns, to retain the free and uncontrolled use, enjoyment, possession and management of the premises hereby granted, or intended so to be, until by reason of default by said party of the first part, in keeping and performing the covenants and agreements in this Indenture contained, or any of them, the said parties of the fourth part are, as hereinafter provided, authorized to enter upon and take possession of, or sell the said premises as hereinafter set forth: 626

And it is hereby expressly covenanted and agreed by and between the parties hereto, covenanting and agreeing for themselves and their successors and assigns, and for all parties who shall become interested as holders or owners of the bonds intended to be secured hereby, in manner following, that is to say:

First.—That this mortgage is made to secure, and there shall be issued thereunder Bonds of the party of the First Part to the amount of eight million of dollars, being eight thou- 627
sand Bonds, one thuosand dollars each, dated the 1st day of December 1877, payable thirty years after date, with interest warrants, payable semi-annually on the first days of June and December thereto attached, for interest at a rate not exceeding six per cent. per annum; of which the first ten warrants shall be payable from and out of the net income of the said Railroad during the six months, between January and July, or July and January next preceding said interest days, after satisfying the expenses of operating and maintaining 628
the said Railroad, and all taxes and assessments, and interest on all prior liens and incumbrances, and not otherwise; and the warrants maturing after the termination of such five years shall be due and payable absolutely:—which said bonds and interest warrants thereto attached shall be of the tenor and effect following—that is to say:

629 TOTAL ISSUE EIGHT MILLIONS OF DOLLARS.

UNITED STATES OF AMERICA.

No.....

States of of Louisiana, Mississippi, Tennessee, and Kentucky, Chicago, St. Louis and New Orleans Railroad Company, Second Mortgage Bond.

The Chicago, St. Louis and New Orleans Railroad Company, acknowledges itself indebted to the bearer in the sum of one thousand dollars, which it promises to pay in lawful money of the United States, on the
630 first day of December, in the year one thousand nine hundred and seven, at its office in the City of New York; and the said company promises to pay interest thereon semi-annually, at said office, upon presentation and surrender of the warrants hereto annexed, on the first days of June and December in each year according to the terms and conditions of the said warrants: that is to say, on the first days of each June and December, from the date of this bond, to and including the first day of December, one thousand eight hundred and
631 eighty-two, said company will pay six month's interest on said bond at the rate of six per cent. per annum, provided that the net earnings of the railroad of said company for the half year included between the months of January and June both inclusive, or July and December both inclusive, then next preceding, after satisfying the expenses of operating and maintaining the same, with all taxes and assessments, and the interest on all liens, charges or incumbrances prior to the mortgage securing this bond, shall suffice to pay such rate of interest on
632 all the bonds issued under said mortgage; or such interest, less than such rate of six per cent. per annum, as such net earnings during such periods shall be sufficient to pay upon all said bonds, each of the same being entitled to a ratable share thereof, and provided that the interest warrant of that date and also all such warrants which shall have previously matured be presented and surrendered as aforesaid.

And it is hereby covenanted and agreed between the 633
said company and the present and future holder of this bond and interest warrants, that the words "net earnings" in the first ten warrants hereto annexed, signify the amount remaining of the income of said railroad during each such period after satisfying and discharging all the expenses and charges aforesaid, and that the Board of Directors shall determine the amount of such net earnings in each half year.

And from and after the first day of December, one 634
thousand eight hundred and eighty-two, the said Chicago, St. Louis and New Orleans Railroad Company, will pay interest on the said one thousand dollars so long as said principal remains unpaid, semi-annually, on the first days of June and December, in each year, at the rate of six per cent. per annum, at its office in the City of New York, in lawful money of the United States upon presentation and surrender of the interest warrants thereafter payable and hereto annexed.

This bond is one of eight thousand bonds 635
of similar amount, tenor and date, referred to in a mortgage made by the said Chicago, St. Louis and New Orleans Railroad Company, and united in by the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company to W. K. Ackerman and Stuyvesant Fish, Trustees, dated the first day of December, one thousand eight hundred and seventy-seven, to secure the payment ef such bonds; and when the certificate 636
hereon endorsed is subscribed by the said Trustees, it will be secured hereby.

W. H. OSBORN, President.

In witness whereof, the said Chicago, St. Louis and New Orleans Railroad Company has caused its common seal, and the signatures of its President add Sec-

637 retary to be hereto affixed the first day of December one thousand eight hundred and seventy-seven.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

STUYVESANT FISH. Secretary.

TRUSTEES' CERTIFICATE.

638 The within is one of eight thousand bonds of one thousand dollars each, secured by a mortgage made by the Chicago, St. Louis & New Orleans Railroad Company, and the New Orleans, Jackson & Northern Railroad Company, and the Central Mississippi Railroad Company, to the undersigned as Trustees, dated the first day of December, one thousand eight hundred and seventy-seven, and has been duly issued in pursuance of the trust created, and conditions contained in said mortgage. Dated December 1st, 1877.

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W. K. ACKERMAN,
STUYVESANT FISH, } Trustees.

NET EARNINGS INTEREST WARRANT, NO. 1.

$30. $30.

The Chicago, St. Louis, and New Orleans Railroad Company will pay to the bearer, on the 1st day of June, 1878, on the presentation and surrender hereof, at its office in the City of New York, thirty dollars, or so
640 much thereof as its net earnings, for the six months ending December 31, 1877, according to the tenor of Bond No. , issued under its Second Mortgage, will pay on each bond secured thereby.

(So to No. 10.) RD. S. CHARLES, Treasurer.

INTEREST WARRANT, NO. 11. 641

$30. $30.

The Chicago, St. Louis and New Orleans Railroad Company will pay to the bearer, on the first day of June, 1883, on presentation and surrender hereof, at its office in the City of New York, thirty dollars, being six months interest on its Second Mortgage Bond No.

(So to No. 60.) RD. S. CHARLES, Treasurer. 642

Second.—That the said party of the first part, its successors and assigns, will punctually pay the holders of the bonds aforesaid intended to be secured hereby, or any that may be issued in lieu, or renewal, or substitution of the same respectively, the interest thereon semi-annually, as the same shall become due and payable, according to the terms of the said bonds and warrants attached thereto; and also on the day and at the 643
place mentioned in said bonds, and whenever the principal sum of the same, or any of them, shall, according to the provisions thereof become due and payable, will fully and entirely pay off and satisfy the whole of said bonds, principal and interest.

Third.—That of the said Bonds so to be issued under and secured by this mortgage so many thereof as include the Bonds numbered ftom number one to number seven thousand two hundred and seventy-nine inclusive. shall be set apart for and paid, issued and delivered to 644
the parties heretofore holders of the Bonds secured by the consolidated mortgages of the New Orleans, Jackson and Great Northern and Mississippi Central Railroad Companies, respectively, who become parties to a certain purchasing agreement made on the thirteenth day of March, 1877, and who shall have complied with and performed the terms of said agreement, or shall so

perform the same; according to the agreement of consolidation made the seventh day of November, 1877, between the New Orleans, Jackson and Northern Railroad Company and the Central Mississippi Railroad Company; so that every holder of a Bond secured by either of said mortgages, or a Debenture certificate of either of the last mentioned Companies, shall be entitled to exchange such Bond or Debenture certificate for Bonds to be issued under and secured hereby, dollar for dollar, at the face thereof, whether such exchange be made forthwith or from time to time hereafter, as provided by the said agreements of purchase of the thirteenth day of March, 1877, and of consolidation dated the seventh day of November, 1877; and the residue of said Bonds, numbered from number seven thousand two hundred and eighty to number eight thousand inclusive, shall be used for the construction, completion and improvement of the line of Railroad of the party of the first part, and its equipment, and for the payment of its debts and liabilities, and the general purposes of said corporations.

Fourth.—That if the party of the first part, its successors or assigns, shall at any time after the expiration of five years from the date hereof, refuse, neglect or omit for any period exceeding three months after demand made, to pay the semi-annual interest on the Bonds secured hereby, or any of them, or any interest warrant issued for the payment thereof, or shall after demand made, make default or neglect for any period exceeding three months after their maturity, to pay the principal of the said Bonds intended to be hereby secured, or of any of them, then and in the case first mentioned of default in the payment of interest hereinabove stated; and upon demand of the holders of said Bonds to the amount of one million of dollars, the whole principal sum of said Bonds shall forthwith become due and payable, anything in the said Bonds or

in these presents to the contrary notwithstanding; and 649
in such case, or in the case of default in the payment of
principal of any of the said Bonds for three months
after maturity of the same, the said trustees or trustee
for the time being, upon the written request of the
holders of one million of dollars in amount of the said
Bonds then outstanding, shall enter upon and take
possession of the Railroad, estates real and personal,
and premises hereby mortgaged, or agreed, or intended
so to be, and operate, use, manage and control the said
Railroad and premises to the best advantage, and 650
appropriate the net income and proceeds thereof, after
defraying the expenses of operating and managing said
Railroad, and the interest on all prior incumbrances,
with all taxes and assessments and the expenses of this
Trust, and any sum which may be necessary to indemnify
said Trustees or Trustee for any liability, loss, or
expenditure, for or on account of any matter or thing
done by him or them in good faith, in pursuance of his
or their duty as such trustees, to the payment in full
without preference,—first of the interest, secondly of 651
the principal of all the aforesaid Bonds then outstanding, if the said income and proceeds be sufficient, but if
not, then *pro rata*, subject always to the prior rights,
lien and preference of the holders of Bonds issued and
holding priority to the Bonds issued under this
mortgage: and the said trustees or trustee, shall also
in case of such default, after or without entering upon
and taking such possession, upon the written request of
holders of a like amount of said Bonds then outstanding, proceed to sell the said Railroad estate real and 652
personal, corporate rights and franchises, and all the
premises hereby mortgaged, or agreed, or intended so
to be, to the highest bidder at public sale in the city of
New York, first giving at least three months notice of
such intended sale by publication, to be made twice in
each week in at least two daily newspapers published
in the city of New York, and in one daily newspaper

published in the city of New Orleans, and in one newspaper published in each of the said states of Mississippi, Tennessee and Kentucky, and shall convey the same to such purchaser or purchasers, free from all and every the trusts hereby created, and without liability to see to the application of the purchase money thereof. And the said parties of the fourth part, their survivor or survivors, successor or successors in the trust for the time being, shall execute and deliver to the purchaser or purchasers a deed of the premises, which shall convey to him or them a full, valid and indefeasible title to the said railroad franchises and rights, and all the estate, real and personal property movable and immovable herein described, and hereby mortgaged and conveyed, or intended so to be, which shall be a perpetual bar to any claim or demand thereto, or to any part thereof, by the said parties of the first, second, or third part, or their successors, or any person claiming or to claim under them or either of them. Or the said parties of the fourth part, their survivors, successors or assigns, may, in their discretion, in case of any default in any of the covenants or conditions herein, foreclose the equity of redemption of the said parties of the first, second and third parts, and of all other persons having any legal or equitable rights or claims, in or to the mortgaged premises, or any part or parcel thereof, by any proceedings in law or in equity provided for by the respective states, in which portions of the said road are built, and in the courts of the United States, or in the proper courts of the United States of America, having jurisdiction thereof; and in case of such sale by virtue of any judgment or decree, or of the power and authority hereby conferred, the said parties of the first, second and third parts, for themselves, their successors or assigns, covenant, promise and agree, to and with the said parties of the fourth part, their survivors, successor or successors, and assigns, and their

grantees under any such conveyance, that they will 657
never claim any right, title, interest or equity in or to any portion of the mortgaged premises, in bar, opposition or impeachment of the title passed thereby. And the said parties of the fourth part, in case of the sale by them of said premises under and by virtue of the power hereby granted and created, or of any decree for that purpose, shall and will appropriate the purchase money thereof, after all due deductions made for the expenses of the trust and of such sale and for indemnity to the trustees aforesaid, *first*, to the interest due 658
on, and, *secondly*, to the principal of the said outstanding bonds, in full, if said purchase money be sufficient, but if not, then *pro rata* and without preference: Provided, however, that if the said party of the first part, its successors or assigns, in case of any such default in the payment of such interest, shall at any time before a sale has been actually made either under the power of sale herein contained, or under the decree of any court or courts, pay or tender to said parties of the fourth part, or their successors, or to the 659
parties entitled thereto, the amount of interest so in arrear with interest thereon from the time of default, and all costs, counsel fees, commissions and expenses incurred in the proceedings for such sale, or in taking possession of and operating said railroad by said parties of the fourth part, any such default and forfeiture shall be opened, and the said party of the first part, its successors or assigns, shall resume possession of said railroad and premises, and all parties hereto shall be restored to their first rights, the said default and con- 660
sequent proceedings notwithstanding, and as if the same had not occurred. In the event of their being or remaining in the hands of the said trustees at any time after any such sale or after taking possession of said railroad, any portion of the Trust Estate, or of the proceeds thereof, after payment in full of the amount due for principal and interest on the aforesaid bonds,

the said trustees shall reconvey or pay over the same to the party of the first part, its successors or assigns ;

Fifth.—That whenever, and as often as the said party of the first part, or its successors, shall acquire any franchises, lands, equipment, or other property or interest of any name or nature, for the use of, or in connection with its railroad, or for the purpose of its incorporation, the said company, its successors or assigns, shall and will acquire, possess and hold the same, and every part and parcel thereof, upon and subject to the lien and trusts of this Indenture ; and in case the said party of the first part, its successors or assigns, shall hereafter receive or acquire lands or other property, and the said parties of the fourth part, their successor or successors, in behalf of the holders of bonds issued under this indenture, shall request the same, the said party of the first part and its successors will from time to time execute and deliver any and every such other mortgage or deed of trust, or further assurance covering the land or property so received or acquired, which shall be necessary to hold and bind the same subject to the trust and lien created by this indenture, and as security for the payment of the principal and interest of the bonds secured hereby ;

Sixth.—That it shall and may be lawful for the said party of the first part, its successors or assigns, at any time or times hereafter, to exchange for other property or sell any part of the premises mortgaged hereby, except the said railroad, which may not be necessary for the uses and purposes of such railroad, and to convey the same, provided the said parties of the fourth part, or their successor or successors shall consent to such sale or exchange ; and the parties of the fourth part, or their successors may, on the request of the party of the first part, its successors or assigns, execute all necessary releases for the purpose, the party of the first part covenanting that the proceeds of any sale so made shall

be invested by either in the improvement of the remaining part of the mortgaged premises, or in the purchase of other property, real or personal, for the uses of its railroad; which property so purchased, as also any acquired in exchange as aforesaid, shall be subject to all the trusts hereby created of the property described in this indenture; or in the purchase of bonds issued hereunder, which bonds so purchased shall be forthwith cancelled and delivered to the parties of the fourth part or their successors; and the said parties of the fourth part and their successors may also, in their discretion, on the request of the party of the first part, consent to any change in the location of the track of said railroad, or the depots and buildings or structures thereof, as may seem expedient, and are authorized to make and deliver all instruments necessary and proper to effect such objects. And the party of the first part expressly covenants and agrees that whenever it or its successors or assigns, shall acquire any lands, property, equipments or franchises of any nature or description for use in connection with said railroad, by any such change in the location of the tracks, depots or buildings thereof, or otherewise, they will hold the same upon, and subject to the trusts of this instrument, and the party of the first part and its successors or assigns, shall and will, whenever so requested, execute and deliver further conveyances and assurances for the better assuring to the parties of the fourth part, and their successors upon the trusts herein expressed, any such property to which the said party of the first part may become entitled by any purchase or exchange, or alteration in the location of the tracks, depots or buildings of said railroad as aforesaid;

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Seventh.—That in case of the death, resignation, removal from the United States, or inability to serve of either of said parties of the fourth part, herein before named as the trustees under this indenture,

or any of their successors in said trust, the franchises, rights and property of every description herein conveyed to them, shall at once vest in the survivor, and such survivor may, with the assent of the party of the first part, designate a person to succeed such person dying or resigning, or unable to act, as one of the trustees aforesaid. And upon the person so designated delivering to such survivor and to the said party of the first part, or its successors, a written acceptance of the trust, he shall become the successor of the person so dying, resigning, removing or becoming unable to act, with all the rights and powers herein and hereby vested in the said parties of the fourth part: And in case both the parties of the fourth part, or their successors or trustees of said trust shall die, resign, remove or become unable to act as aforesaid, so that there shall be no trustees to discharge the trusts and duties created by this instrument, or if any survivor and the party of the first part shall not agree in the choice of a person to succeed to and fill any such vacancy, persons to succeed thereto or to fill such trusteeships, or any of them, may be appointed by the Chief Justice of the Supreme Court of the State of Louisiana, on the application of the party of the first part, or of any such surviving trustee, or of holders of at least one hundred Bonds issued hereunder as aforesaid, provided that notice of the application be previously published in at least three daily papers in the City of New York, and in one newspaper published in each of the States of Louisiana, Mississippi, Tennessee and Kentucky for four successive weeks, once in each week;

And the said party of the first part, its successors and assigns further covenants and agrees to pay to each of the said parties of the fourth part, or their successors for their services under this trust and in the discharge of their duties the sum of four thousand dollars of the Bonds secured by this mortgage, together with any necessary expenses actually and properly incurred for

clerk hire and legal advice; And it is further covenant- 673
ed and agreed, and this trust is accepted upon the express condition, that the said trustees, parties of the fourth part, shall not, nor shall their successors incur any liability or responsibility whatever in consequence of permitting or suffering the said party of the first part to retain or be in possession of the Railroad property and premises hereby mortgaged, or any part thereof, nor for any destruction, loss or damage which may be done to or incurred by the Railroads or estates hereby mortgaged, either by the act or default of such 674
party of the first part or its agents or servants, or of any other person or persons whomsoever, nor for the consequences of any breach on the part of the party of the first part, or the parties of the second or third parts, of any covenants herein contained, or of any act of the party of the first part, its agents or servants, or of the parties of the second and third parts, nor for any other matter or thing except for their or his own willful or negligent breach of the trusts herein expressed and contained; 675

Eighth.—And it is expressly covenanted and agreed, by and between the parties aforesaid, that all and singular the covenants, conditions and agreements herein contained, shall extend and apply to the successors and assigns of the respective parties, whether they be expressly named therein or not.

And it is hereby expressly provided, and this Indenture is made upon condition that if the said Chicago, St. Louis and New Orleans Railroad Company, its suc- 676
cessors or assigns, shall well and truly pay or cause to be paid, all the interest, without deduction for any taxes or assessments, which shall, from time to time, become due and payable upon the said Bonds as hereinbefore stipulated, and shall pay the said principal of said Bonds at maturity, according to the tenor and intent thereof, and shall keep and perform all and

every the covenants herein contained on the part of the said Company, then and in that case this Indenture shall be and become null and void, and the estate hereby granted, or agreed so to be, shall be void, and of no effect, anything herein contained to the contrary notwithstanding; otherwise this Indenture and the estate hereby granted and conveyed, shall be and remain in full force;

In witness whereof the said Chicago, St. Louis and New Orleans Railroad Company hath caused its common seal and the signatures of its President and Secretary to be hereto affixed, and the said New Orleans, Jackson and Northern Railroad Company hath also caused its common seal and the signatures of its President and Secretary to be heretofore affixed; and the said Central Mississippi Railroad Company hath also caused its common seal and the signatures of its President and Secretary to be hereto affixed; and the said W. K. Ackerman and Stuyvesant Fish, Trustees, have hereto set their hands and seals:—all of which is done the first day of April in the year of our Lord one thousand eight hundred and seventy-eight.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

The Chicago, St. Louis & New Orleans Railroad Company, by

W. H. OSBORN,
President.

STUYVESANT FISH,
Secretary.

Seal of the New Orleans, Jackson and Northern Railroad Company.

The New Orleans, Jackson & Northern Railroad Company, by

W. H. OSBORN,
President.

STUYVESANT FISH,
Secretary.

Seal of the Central Mississippi Railroad Company.

The Central Mississippi Railroad 681
Company, by

W. H. OSBORN,
President.

STUYVESANT FISH,
Secretary.

:SEAL: W. K. ACKERMAN, }
} Trustees. 682
:SEAL: STUYVESANT FISH, }

Witnesses to the signature of W. K. Ackerman, as Trustee.

JOHN DUNN,
WM. J. MAURIAC.

Signed, sealed and delivered by the said W. H. Osborn and Stuyvesant Fish, in their said respective capacities, and by said Stuyvesant Fish, as Trustee, in our presence. 683

W. E. Rutan,
Howard H. Henry.

State of New York, }
City and County of New York, } ss:

Be it remembered that on this first day of April, in the year one thousand eight hundred and seventy-eight, before me, Charles Nettleton, a Commissioner 684
for the State of Louisiana, resident of the said City of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Louisiana, to take the acknowledgment and proof of deeds or other conveyances to be used or recorded in said State; and also a Commissioner of the State of Mississippi, resident in said City of New York, ap-

pointed by the Governor of the State of Mississippi, and duly qualified under the laws thereof to take acknowledgments and proofs of deeds and other conveyances to be used or recorded in said State; and also a Commissioner of the State of Tennessee, resident in said City of New York, appointed by the Governor of the State of Tennessee, and duly commissioned and qualified under the laws thereof to take the acknowledgment and proofs of deeds or other conveyances to be used or recorded in said State of Tennessee; and also a Commissioner for the State of Kentucky, resident in said City of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Kentucky, to take the acknowledgement and proof of deeds or other conveyances to be used or recorded in said State—came W. H. Osborn and Stuyvesant Fish, with each of whom I am personally acquainted, and also personally known to me to be the identical persons who signed the foregoing instrument, and also known to me to be respectively the President and Secretary of the Chicago, St. Louis and New Orleans Railroad Company, the party of the first part in said instrument; and also known to me to be respectively the President and Secretary of the New Orleans, Jackson and Northern Railroad Company, the party of the second part in said instrument; and also known to me to be respectively the President and Secretary of the Central Mississippi Railroad Company, the party of third part in said instrument, who, being by me duly sworn, did depose and say: That they reside in said City of New York; that they were respectively the President and Secretary of the Chicago, St. Louis and New Orleans Railroad Company; that they knew the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal, and was affixed by authority of said company, and that they signed their names to the said instrument as President and Secretary of said company,

and in behalf thereof; and the said W. H. Osborn and 689
Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of that company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

The said W. H. Osborn and Stuyvesant Fish did further depose and say that they were respectively the President and Secretary of the said New Orleans, Jack- 690
son and Northern Railroad Company; that they knew the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal, and was affixed by authority of said company, and that they signed their names to the said instrument as President and Secretary of said company, and in behalf thereof; and the said W. H. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of 691
said company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

The said W. H. Osborn and Stuyvesant Fish did further depose and say, that they were respectively the President and Secretary of the said Central Mississippi Railroad Company; that they knew the corporate seal of said Company; that the seal affixed to the foregoing instrument was such corporate seal; 692
and was affixed by the authority of said Company, and that they signed their names to the said instrument as President and Secretary of said Company, and in behalf thereof; and the said W. A. Osborn and Stuyvesant Fish then and there acknowledged that they signed, sealed and delivered the said instrument as their official act and deed, and as the act and deed of said

693 Company, for the uses and purposes therein expressed, on the day and in the year therein mentioned.

In witness whereof I have hereto set my hand and have also hereto affixed my seal as commissioner for each of the States above mentioned, at my office in the said City of New York, the day and year last above written.

694 CHARLES NETTLETON,

SEAL. COMMISSIONER FOR LOUISIANA,
IN AND FOR NEW YORK.

CHARLES NETTLETON,

SEAL. COMMISSIONER FOR MISSISSIPPI,
IN AND FOR NEW YORK.

CHARLES NETTLETON,

695 SEAL. COMMISSIONER FOR TENNESSEE,
IN AND FOR NEW YORK.

CHARLES NETTLETON,

SEAL. COMMISSIONER FOR KENTUCKY,
IN AND FOR NEW YORK.

REGISTER'S OFFICE,

Hardeman County, Tennessee.

696 I, R. F. Ammons, Register of Hardeman County, Tennessee, do hereby certify that the foregoing thirty-three pages of printed matter are a true and perfect copy of the mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, to W. K. Ackerman and Stuyvesant Fish, as the same now appears on record, in my office, in Book G, pages fifty-five to seventy-six, and that said original mortgage was re-

gistered, as aforesaid, in my office and in said book, 697
upon the fifteenth day of April, A. D. 1878, and filed for registration on the said fifteenth day of April, A. D. 1878, in my office as register.

In witness whereof I have hereunto set my hand and private seal, there being no public seal of my office, this fifth day of March, A. D. 1880.

(Sd.) B. F. AMMONS, [SEAL.]
Register of Hardeman County.

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Decree.

UNITED STATES OF AMERICA,

DIVISION OF THE WESTERN DISTRICT OF TENNESSEE.

In the Circuit Court of the United States, within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court, at a Regular Term thereof, begun and held for its May Term, A. D., 1881, at the United States Court House, in the City of Memphis, in said District, on, to-wit: the 7th day of October, A. D. 1881, in the following cause, to-wit:

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CALVIN AMORY STEVENS, et al., Plaintiffs, *vs.* The MOBILE and OHIO RAILROAD COMPANY, et al., Defendants.	No. 319.

3

This cause came on to be heard upon the bill of complainants, the answers of defendants and other pleadings in the cause, and upon the proof adduced by both complainants and defendants and the arguments of counsel. And it appearing to the satisfaction of the Court, that the bill of complaint is

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without equity and that both the law and equity of the cause are with the defendants. And it further appearing that the lien and mortgage reserved by the act of Legislature of Tennessee, of February the 11th, 1852, in favor of the State on the road and other property of the defendant the Mobile and Ohio Railroad Company, was solely to indemnify and secure the State against loss on account of the loan of her bonds to said defendant company as therein provided, and not to secure the payment of said bonds as contended by complainants. And it further appearing that the said lien and mortgage, so created and reserved by said act, was in due form of law assigned, transferred and conveyed to William Butler Duncan, Adrian Iselin and Richard T. Wilson, as Trustees, by said State and defendant Company to secure the payment of the bonds issued by said defendant company, known as the transubstitution bonds and held by defendants Ernest Saladin, Augusta Iselin and others, and said Duncan, Iselin and Wilson, Trustees, were by said asignment, transfer and conveyance invested with a first and paramount mortgage upon the said property of the defendant, The Mobile and Ohio Railroad Company, which was and is in all respects legal and valid and for the benefit and security of their said *cestui qui* trusts, according to the tenor and effect thereof. It is accordingly ordered, adjudged and decreed by the Court, the bill of complaint be, and the same is dismissed. And it is further ordered that the title of the said Duncan, Iselin and Wilson, Trustees, as aforesaid, be quieted; and complainants or others, the holders of the bonds loaned by the said State to said defendant Company, under the act aforesaid, and the acts amendatory thereof, be perpetually enjoined from asserting any claim of title to the property of said defendant company on account of said

loan and that the complainants pay all costs accruing in this case, to be taxed, for which let execution issue. 9

Thereupon the complainants at the same time pray appeal to the next term of the Supreme Court, which is allowed; and the amount of the appeal bond to be given by them is fixed at one thousand dollars; and the defendants waive the issuance and service of citation.

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Order setting cause for trial.

It is ordered by the Court, that the foregoing cause be set for trial, on the first Monday of September next, when the same will be heard, unless good cause for continuance be shown.

August 9th, 1880.

Order overruling motion to dismiss.

In the above named cause, the motion made by the complainants to dismiss their bill in common form, and held under advisement, was by the Court overruled. Wherefore, It is ordered that the said motion of the complainants to dismiss their bill upon the payment of the costs be, and the same is by the Court overruled. 11

Sept. 25th, 1880.

12

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS, EUGENE KELLY, and JOHN T. TERRY, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MOBILE AND OHIO RAILROAD COMPANY.

vs.

THE MOBILE AND OHIO RAILROAD COMPANY, and WM. BUTLER DUNCAN and ANDREW F. ELLIOTT, Receivers.

Know all men by these presents, that we, Calvin Amory Stevens, Eugene Kelly and John T. Terry, residents of the City and State of New York, and Peter Geddes, resident of the City of Brooklyn in said State, and Solon Humphreys and Eugene Plunkett, residents of the City and State of New York, are jointly and severally held and firmly bound unto the Mobile and Ohio Railroad Company, Wm. Butler Duncan and Andrew F. Elliott, Receivers,

in the sum of one thousand dollars each, to be paid to the said, the Mobile and Ohio Railroad Company, Wm. Butler Duncan and Andrew F. Elliott, Receivers and their successors for which payment well and truly to be made, each of us doth hereby bind himself, his heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals, and dated this thirteenth day of October, in the year of our Lord, one thousand eight-hundred and eighty-one.

Whereas, lately, at a Regular Term of the Circuit Court of the United States in and for the Western District of Tennessee, held at the City of Memphis in said State, a final decree was rendered in the above entitled cause, dismissing the complainants' bill out of said court.

And whereas an appeal from said decree to the Supreme Court of the United States was prayed on behalf of complainants in said suit, namely, Calvin Amory Stevens, Eugene Kelly and John T. Terry, which appeal was granted, and the order granting the same was filed with the clerk of said Circuit Court.

Now, the condition of the above obligation is such that if the said Calvin Amory Stevens, Eugene Kelly and John T. Terry shall prosecute the said plea to effect and answer all damages and costs if they fail to make the said appeal good, then the above obligation to be void, else to remain in full force and virtue.

CALVIN AMORY STEVENS, [SEAL.]
EUGENE KELLY, [SEAL.]
JOHN T. TERRY, [SEAL.]
P. GEDDES, [SEAL.]
SOLON HUMPHREYS, [SEAL.]
EUGENE PLUNKETT, [SEAL.]

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

On this 13th day of October, 1881, before me personally appeared Calvin Amory Stevens, Eugene Kelly, Peter Geddes, John T. Terry, Solon Humphreys and Eugene Plunkett to me known and known to me to be the same persons described in and who executed the foregoing bond and severally acknowledged to me that they executed the same.

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

CALVIN AMORY STEVENS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

CALVIN AMORY STEVENS.

Sworn to before me this 13th day of October, 1881.

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

PETER GEDDES, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

P. GEDDES.

Sworn to before me this 13th day of October, 1881.

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

13 UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

EUGENE KELLY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE KELLY.

14 Sworn to before me this 13th }
day of October, 1881. }

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

15 JOHN T. TERRY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

JNO. T. TERRY,

Sworn to before me this 13th }
day of October, 1881. }

16 EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

SOLON HUMPHREYS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand

dollars over and above all my debts and liabilities and property exempt by law from execution.

SOLON HUMPHREYS.

Sworn to before me this 13th day of October, 1881.

[L. S.]

EDWIN F. COREY,
Notary Public,
N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York.

EUGENE PLUNKETT, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE PLUNKETT,

Sworn to before me this 13th day of October, 1881.

[L. S.]

EDWIN F. COREY,
Notary Public,
N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York.

S. NEWTON SMITH, being duly sworn, deposes and says: I am well acquainted with Solon Humphreys, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

S. NEWTON SMITH.

Sworn to before me this 13th day of October, 1881.

[L. S.]

EDWIN F. COREY,
Notary Public,
N. Y. Co.

21 UNITED STATES OF AMERICA, }
Southern District of New York. }

WILLIAM H. FARRELL, being duly sworn, deposes and says: I am well acquainted with Eugene Plunkett, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

WM. H. FARRELL,

22

Sworn to before me this 13th day of October, 1881. }

EDWIN F. COREY,
[L. S.] *Notary Public,*
N. Y. Co.

By the Honorable E. S. HAMMOND, United States Judge, in and for the Sixth Judicial Circuit, Western Dis-
23 trict of Tennessee.

I hereby approve the foregoing bonds as to form and manner of execution and as to the amount thereof and the sufficiency of the sureties.

Dated, October 18th, 1881.

E. S. HAMMOND,
United States Judge.

24

Deposition of D. B. Cliffe.

1

The deposition of D. B. CLIFFE, taken on behalf of the defendants, on notice hereto attached in the case of Calvin Amory Stevens *v.* The Nashville and Northwestern Railroad Co. *et al.*

The witness, said D. B. CLIFFE. being duly cautioned and sworn, deposed as follows:

1st interrogatory propounded by Ed. H. East and R. McP. Smith, attorneys for the defendants:

2 My name is D. B. Cliff; occupation, physician; residence, Franklin, Tennessee; age 56 years. I was appointed Receiver of the Nashville and Northwestern Railroad by Governor W. G. Brownlow, and took charge of said road on the 14th July, 1868, and continued as such Receiver until 21st October, 1869, when I resigned. General Innis was Receiver previous to my appointment of the same road, having been appointed by Governor Brownlow. I operated the road for about thirty days at a very considerable loss; my recollection is that we 3 lost about $10,000 or $15,000 that month. On the 1st September, 1868, after consultation with Governor Brownlow, I leased the road to the Nashville and Chattanooga Railroad Company, which latter company agreed to run the road and save the State harmless as far as the pay of employees, &c., was concerned. The lease was made because it was impossible to make the road pay expenses. The roadbed, cars, and machinery were in a bad condition. The hands had "struck," the roadbed was 4 grown up with wild weeds, the tanks were dry, and one bridge had been burned, and the rolling stock was in a bad condition. The employees under the

previous Receiver, as also under the old company, had not been paid, and "struck," and threatened to destroy the property of the company, and did burn one bridge above mentioned. The Tennessee River bridge was in danger, and I employed a guard with shot guns to protect it.

The State advanced bonds to me to the amount of $250,000 in bonds (250 bonds) for the Nashville and Northwestern Railroad, and 200 bonds of $1,000 each for the building of the Huntingdon branch. The lessees operated the road during the balance of my receivership, and thereafter the same parties re-leased the same from the Legislature.

The experiment made by me in the running of the said Nashville and Northwestern Railroad was convincing to my mind that the road could not be operated by a receiver without loss to the State. During the month in which I run the road we did repairing to the roadbed but just sufficient to run the trains. A force sufficient to keep it in proper repair would have increased our loss during that time to $30,000, or thereabouts. There was hardly a safe bridge on the road between Nashville and Hickman, a distance of 170 miles. The road was not completed by the company, and the Government of the United States completed the building of the road, a distance of some 40 or 50 miles this side, or east, of Tennessee River, as a military measure. I do not know this fact of my own knowledge, but simply as a matter of current history.

(Excepted to by counsel for complainant as hearsay evidence, and therefore incompetent.

S. WATSON,
Solicitor for complainant.)

Cross-examined by SAM'L WATSON, solicitor for complainant:

My occupation before I took charge of the Nash-

ville and Northwestern Railroad Company as Re- 9
ceiver had been that of physician, and I had also
been Receiver for the State of the Memphis, Clarks-
ville and Louisville Railroad Company. I was Re-
ceiver of the latter road from January, 1868, to
Dec., 1869. I never had any experience whatever, or
management, or connection with the running of a
railroad before that time.

In politics I was in accord with the Brownlow
administration. I was appointed without any solic-
itation to the receivership of both roads. Innis had 10
been the Receiver for about six months previous to
my appointment of the Nashville and Northwestern
road.

I gave my deposition before the committee of the
Legislature to investigate the N. & N.-W. R.R. Co.
and made a report to the comptroller of the State
on November 1, 1869, embracing the month of Oc-
tober, 1869, and in that report I did make use of
the words following: "A comparison of the earnings
of the road for the last fourteen months shows a 11
steady increase in its business, and gives strong
hopes of its ultimate ability to meet the payments
due the State on account of interest."

This report embraces ten days after I went out of
office of Receiver, by arrangement with my suc-
cessor.

My recollection is that the Nashville and North-
western Railroad Company accepted the provis-
ions of an act of the Kentucky Legislature extend-
ing the liens of the Tennessee bonds issued to that 12
road to that portion of the road lying in Kentucky.

(Excepted to by counsel for defendants, be-
cause not the best evidence.)

I consider the experience of running the road for
one month as Receiver as aforesaid as conclusive to

my mind that the road could not be run without great loss to the State, and I would have had to cease the operation of the road after that month's trial for want of funds.

Re-examination :

Colonel Innis, previous to his appointment, was the colonel of a regiment of engineers and bridge builders in the United States Army, called the Michigan Engineers. And immediately before his appointment as Receiver he was the Superintendent of the Nashville and Chattanooga Railroad Company, under Mr. Burns. I had employed under me during my receivership experienced and competent railroad men. The impression I got that the Nashville and Northwestern Railroad Company accepted the provisions of an act of the Kentucky Legislature extending the liens of Tennessee bonds issued to that road, to that portion lying in Kentucky, was obtained while I was Receiver of said railroad.

D. B. CLIFFE.

Subscribed and sworn to before me, this 29th August, 1879.

E. R. CAMPBELL,
Examiner.

Deposition of John M. Fleming.

THE UNITED STATES OF AMERICA, } ss.:
Eastern District of Tennessee. }

Be it remembered, that on the 26th day of September, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, personally came JOHN M. FLEMING, witness on the part and behalf of the defendants in a certain suit now depending, and undetermined, in the Circuit Court of the United States for the Western district of Tennessee, wherein Calvin Amory Stevens, *et al.*, on the part of the holders of Internal Improvement bonds of Tennessee, issued to the Memphis & Charleston R. R. Co., are complainants, and the Memphis & Charleston Railroad Company *et al.*, are defendants, to depose and the truth to say in said suit. And thereupon the said John M. Fleming, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows :

1*st Inter.* What is your place of residence, and how long have you resided here ?

2*d Inter.* Have you any connection with or interest in any of the railroads of the State, their stocks or securities ?

3*d Inter.* How long have you been a resident of the State, and what has been your occupation since you were 21 ?

4*th Inter.* Were you a member of the General As-

5 sembly of the State of Tennessee during the years 1869 and '70, and what official position did you hold in that Assembly?

5th Inter. State the facts, reasons and public sentiments of the State which caused that General Assembly to pass the Act of January 20th, 1870, amendatory of the Act of 10th of March, 1869, enabliug the railroads to retire their debts to the State and also the Act for the sales of delinquent roads at the suit of the State?

6 *6th Inter.* State whether any corrupt influences within your knowledge were used by the railroad companies, or their officials, or any of their agents to induce that legislation?

7th Inter. State who were appointed Commissioners of the State by the bills to foreclose the delinquent roads, and why were the three men elected who were?

8th Inter. State any other fact or facts which you 7 may know which will throw light upon the inquiries already propounded to you.

Answer to *Inter.* 1. I reside in Knoxville, and have lived here since May, 1855.

Ans. to 2d. None whatever.

Ans. to 3d. I was born in Tennessee, and with the exception of ten or twelve years during my boyhood, have lived within the State all my life. I am forty-six years of age. Since attaining my majority my occupation has been that of an editor and lawyer; 8 have been twice a member of the State Legislature, and for two years was State Superintendent of Public Instruction. For about twelve years, closing December, 1878, I was editor of a daily political paper in Knoxville.

Ans. to *Inter.* 4. I was a member of the General Assembly of the State of Tennessee for 1869–70, and a portion of 1871, and held the official position

of Chairman of the House Committee on Judiciary. 9

Ans. to Inter. 5. In answer to this interrogatory I can state in general terms and somewhat in detail "the facts and reasons" that influenced my own action as a member of the General Assembly, and, as I believe, the action of those of other members constituting a majority of the body with whom I co-operated in effecting the legislation referred to.

The General Assembly of 1869–70, when it met in October, 1869, found the State of Tennessee in a deplorable financial condition. The political and 10 social condition of the State from the close of the war up to that time may be described as having been one of disorder. The people were much and widely divided in sentiment, and the majority, for political reasons, had been deprived of the right of suffrage by State Legislature enactments. Pending this state of affairs the Legislature had made very liberal appropriations to works of internal improvements (at the instance, it is proper to say, in many cases of the disfranchised element), so 11 that on the first Monday in October, 1869, when the General Assembly met, it was found that our State debt, actual and contingent, had swollen to the appalling volume of about $40,000,000 to $42,000,000. The State Treasury was empty, the resources of the State for purposes of revenue were very much reduced, in consequence of the demoralization of our labor system and other causes, and the people were neither in a condition nor humor to submit to a heavy rate of taxation. 12

The State had made default in the payment of interest the previous July, and its bonds in consequence were much depreciated in the financial markets. The General Assembly found itself confronted with the alternative of providing for the payment of the interest on the debt, or of repudiating or indefinitely postponing it in whole or in

13 part. The idea of repudiation was not seriously entertained by the majority of the body, and yet it seemed utterly impracticable to provide for the interest upon the face of the debt as it then stood. To reduce the debt, therefore, to a manageable condition became a study. Upon investigation only about $120,000 of bonds were ascertained to have been illegally and fraudulently issued, and the payment of those were interdicted. The validity of the remainder of the debt was practically recog-
14 nized, and the Legislature went to work to so take care of the debt as to preserve the honor of the State. An examination of the general situation disclosed the fact that a number of railroad companies to which liberal loans of bonds had been made had become hopelessly insolvent. They had ceased to pay interest on the loans, their roads were unfinished and in the hands of Receivers appointed by the Governor, under the terms of the General Internal Improvement Acts. These roads, instead
15 of paying expenses, were a burden upon the State Treasury. The rolling stock was wearing out without hope of replenishment, and the roads themselves rapidly going to decay. I had, myself, for several months before my election advocated through my newspaper the sale of all the defaulting roads as a measure of good State economy, and I was the author of the original bill providing for their sale.

My recollection is that the original bill, which was by no means perfect, but only designed as the
16 basis upon which to elaborate a more perfect bill, was drafted by me in my own room, and offered in the House, without consultation with any one. The original bill was referred to the Judiciary Committee, to which committee I presented a more elaborate bill as a substitute for the original, and my recollection is that the latter bill was reported by the committee in lieu of the original, and with some

amendments finally became a law. The Commis- 17
sioners appointed by the act, having selected their attorneys, undertook to proceed with their duties, but discovered, as they reported, that the law was insufficient, inasmuch as proper authority for proceeding in chancery for foreclosure had not been confirmed by the act. Thereupon a new bill, prepared, I believe, by the Commissioners and their attorneys, was presented and enacted, and under *that* law the defaulting roads were sold. The purpose of their sale, as before intimated, was to save 18
as much as possible of the State's failing securities and utilize them in the reduction of the bonded debt. Subsequently to the introduction of the bill above described, and before its passage, the bill was introduced, which became a law on the 20th of January, 1870, enabling the debtor railroads to retire their indebtedness by discharging it with bonds of a series. This act was designed to remove and did remove the restriction that had been placed upon the railroad companies by the proviso to the 19
act of 10th March, 1869, which restriction limited the payments by railroad companies, that had issued second mortgage bonds, to the same series of bonds to which the bonds belonged that had been issued to them. It was not considered that the bill (the act of July 20th, 1870) conferred any *new* rights or privileges upon the companies, but that it simply restored the privilege enjoyed under the Sinking Fund clause of the Internal Improvement Act of 1852, under which it was understood the 20
railroad companies had discharged their amount indebtedness for years in bonds of the State without regard to series. This principle had been recognized from the establishment of our Internal Improvement System, by both the Executive and Legislative departments of State, and the General Assembly of 1869-70, in passing the Act of January

21 2d, 1870, did not regard it as any innovation upon the long settled policy of the commonwealth in regard to such settlements. But a few years before, the State, with the concurrence of all departments of the Government (the Attorney-General having sanctioned the proceeding), had settled with the Louisville and Nashville Railroad Company, receiving bonds in payment without regard to series. And this settlement was made by virtue of the provisions of the Act of 1852 and amendments thereto,
22 above referred to. This Act of Jan. 20th, was believed to be inherently just but there was another consideration moving the Legislature to its enactment. The called solvent roads that were expected to avail themselves of its provisions were in an embarrassed condition. They had but recently been restored from military possession to the possession of the companies. They were struggling for rehabilitation under very discouraging circumstances. There was a general desire for their resuscitation and re estab-
23 lishment as permanent thoroughfares for our commerce, but it was apprehended that under the pressure of accumulated debt and impaired credit they would soon be compelled to suspend their payments to the State, be classified as defaulting roads, and pass into the hands of receivers, and ultimately be sacrificed at immense loss both to the State and the companies, and in their view of the case it was regarded as a measure of sound and healthful policy for all the interests involved to accept from the so-
24 called solvent companies in discharge of their debts the bonds of the State, of any series, and to permit them to issue *pro tanto* their own first mortgage bonds, the two-fold object having the reduction of the debt of our State and the rehabilitation of our railroad system. These two measures, the bill to sell the defaulting railroads, and the bill to enable railroad companies to retire their debts, were re-

garded as kindred measures, and progressed almost 25
pari passu, though differing considerably in the date of final passage. The friends of one measure were generally the friends of the other, the purpose in the minds of the majority being to reduce the volume of the public debt to manageable proportions, and to marshal all available assets of the State for that purpose. As a result of the operations of the two measures the volume of the debt was reduced to about $20,000,000, a sum which, with judicious management, I think might have been car- 26
ried by the State with comparative ease. Such are the principal facts and reasons that influenced my own action, and, as I believe, controlled the action of the majority of the members of the General Assembly of 1869-70. In regard to the legislation referred to in the interrogatory as to the "public sentiments of the State" in reference to the two measures, I can only say that while they were pending they seemed to command almost universal approval. Their passage was certainly generally acqui- 27
esced in. It was not until after the refunding of the State debt in 1873, when there arose a somewhat clamorous outcry against the validity of portions of the public debt, that there was manifested any serious popular dissatisfaction with either of the measures referred to. Notwithstanding the investigation of a joint select committee, of which I was a member, had shown that in some cases there had been irregularities in the procurement of bonds from the State, the legality of their issuance and the val- 28
idity of the debt had not been seriously disputed until 1873, as before stated, nor had the propriety and wisdom of the legislature referred until then become a subject of grave popular complaint. Such is my recollection.

Ans. to Int. 6.—No such influences were used by any of said parties within my knowledge.

29 *Ans. to Inter.* 7.—The commissioners appointed by the Legislature to sell the defaulting railroads, were Hon. R. J. McKinney, Hon. Archibald Wright and Hon. Francis B. Fogg. The first two named had been Judges of our Supreme Court of Tennessee, and the last named was a lawyer of advanced age and marked eminence. All three were conspicuous personages in the Commonwealth, in whose integrity the whole population had confidence. It was because of their ability and universally recog-
30 nized incorruptibility that they were selected as commissioners by the General Assembly.

Ans to Inter. 8—I believe no other material and relevant fact occurs to me calculated to throw light upon the inquiries propounded to me.

And further deponent saith not.

(Signed) JNO. M. FLEMING.

31

32

Deposition of J. G. M. Ramsey.

Caption same as in Craig's and Jackson.

I was eighty-two years old on the 25th day of March last, and have resided all my life in or near Knoxville, Tenn., except when I have been absent temporarily. I have been a practicing physician during my life; I have been President of several different banks, and among others of "The Tennessee State Bank", at Knoxville. I was appointed by Governor Trousdale, in 1851, the agent of the State of Tennessee, to receive for the East Tennessee and Georgia Railroad Company, three hundred and fifty (350) State of Tennessee coupon bonds, payable to blank or bearer, bearing six per cent interest, evidenced by coupons attached to the bonds, payable semi-annually in the city of New York; each bond was for $1,000, and had forty years to run to maturity. The duties of my agency were to sell the bonds, and apply the proceeds to the ironing and equipping of the road, as required by the Act. I was appointed to and did act as the agent of the State of Tennessee and not of the railroad company. I went in person to Baltimore, Philadelphia, Boston, and New York, to sell these bonds,— and sold in the New York market two hundred and forty-seven of them for cash, at rates varying from 103¼ to 104½ that is from 3¼ per cent to 4½ above par. I sold these bonds as straight Tennessee State Bonds, and procured the favorable price which I obtained for them by representing to them and showing from the Comptroller's report, that the indebtedness of the State of Tennessee, amounting to only three millions of dollars ($3,000,000) one half of which was an interest paying stock; that is the State's stock in the Bank of Tennessee and the Union Bank, and by representing also the resouces of the State, the extent of its territory,

5 the fertility of its soil, and the character of its people and its climate, its agricultural products, and its mineral resources. I never mentioned or represented that the bonds were secured by any statutory lien on the property of the road in favor of the bondholder, nor did any broker ever ask me any such question or make any such claim. I afterwards sold the balance of 103 bonds at par. These bonds were all sold prior to the year 1852, and during the year 1851. The 103 bonds which were last sold were sold at par or a little above. The Bank of Tennessee, of a branch
6 of which at Knoxville I was President, was the fiscal agent of the State, and belonged wholly to the State, received revenues and made its disbursements in the payment of its judicial and executive officers, and in the payment of its coupons on its bonds. The proceeds of the bonds I personally disbursed. I have no connection with or interest in the railroads of the State of Tennessee, their stocks or their bonds.

And further deponent saith not.

(Signed) J. G. M. RAMSEY.

7 (Excepted to for irrelevancy.)

8

Deposition of John J. Craig.

THE UNITED STATES OF AMERICA, } ss.:
Eastern District of Tennessee, }

1 Be it remembered, that on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office in the city of Knoxville, within said District, in the Sixth Circuit, was produced and personally came John J. Craig, witness on the part and behalf of the defendants, in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis 2 and Charleston Railroad Company, are complainants, and the Memphis and Charleston Railroad Company, and the East Tenn., Va. & Ga. Railroad Company are defendants, to depose and the truth to say in said suit.

And thereupon the said John J. Craig, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

3 I reside at Canton, Miss., and am here temporarily until I can return in safety; I reside about 200 miles from Memphis, Tenn., and about 400 miles from Knoxville, Tenn.

I resided in New York City from 1865 to 1868, and from 1868 to 1877 in Knoxville, Tenn., and from 1877 to 1879 in Miss.; I was a banker most of the time when in any business; my house of Craig, Morton & Co., of New York, acted as agents of the Cincinnati, Cumberland Gap & Charleston Railway Company during the years of 1866 4 and 1867—the time may have embraced from 1865 to the

5 the fertility of its soil, and the character of its people and its climate, its agricultural products, and its mineral resources. I never mentioned or represented that the bonds were secured by any statutory lien on the property of the road in favor of the bondholder, nor did any broker ever ask me any such question or make any such claim. I afterwards sold the balance of 103 bonds at par. These bonds were all sold prior to the year 1852, and during the year 1851. The 103 bonds which were last sold were sold at par or a little above. The Bank of Tennessee, of a branch
6 of which at Knoxville I was President, was the fiscal agent of the State, and belonged wholly to the State, received revenues and made its disbursements in the payment of its judicial and executive officers, and in the payment of its coupons on its bonds. The proceeds of the bonds I personally disbursed. I have no connection with or interest in the railroads of the State of Tennessee, their stocks or their bonds.

And further deponent saith not.

(Signed) J. G. M. RAMSEY.

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(Excepted to for irrelevancy.)

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Deposition of John J. Craig.

THE UNITED STATES OF AMERICA, }
Eastern District of Tennessee, } ss.:

Be it remembered, that on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office in the city of Knoxville, within said District, in the Sixth Circuit, was produced and personally came John J. Craig, witness on the part and behalf of the defendants, in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis and Charleston Railroad Company, are complainants, and the Memphis and Charleston Railroad Company, and the East Tenn., Va. & Ga. Railroad Company are defendants, to depose and the truth to say in said suit. 1 2

And thereupon the said John J. Craig, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows: 3

I reside at Canton, Miss., and am here temporarily until I can return in safety; I reside about 200 miles from Memphis, Tenn., and about 400 miles from Knoxville, Tenn.

I resided in New York City from 1865 to 1868, and from 1868 to 1877 in Knoxville, Tenn., and from 1877 to 1879 in Miss.; I was a banker most of the time when in any business; my house of Craig, Morton & Co., of New York, acted as agents of the Cincinnati, Cumberland Gap & Charleston Railway Company during the years of 1866 and 1867—the time may have embraced from 1865 to the 4

5 latter part of 1868—and did negotiate the sale of State bonds issued to them by the State. As to the amount of said bonds so sold and negotiated by us, I do not think it was less than one hundred thousand dollars nor more than three hundred thousand dollars. The time of selling said bonds was between the years 1865 and the latter part of 1868, as stated above, and the place of sale was Wall street, New York City. I am confident we sold said bonds at not less than 60 cents nor more than 80 cents; they were coupon bonds of the State, payable to bearer;

6 I sold them as straight Tennessee State bonds, and did not represent them as having any lien on any railroad in favor of the bondholders. The question was never mooted as to their being issued to any railroad at all. If it had been believed or represented that there was additional security of any kind it would probably have increased the value of the bonds, but they were sold wholly as State bonds, and their value rested wholly upon the faith of the State in paying them.

I resided in Knoxville about 20 years prior to 1865,

7 and up to that date I was cashier of the Union Bank at Knoxville from the year 1853 to the close of the war. During the time I served as such cashier my opportunities for knowing and learning the value of the bonds were good, as I often had occasion, both in my official and individual capacity, to handle the different series of State bonds, sometimes holding them as collateral for money loaned, and sometimes purchasing them for myself and friends as investments. During the period I do not recollect of ever having heard of such bonds having any

8 mortgage lien on the railroads in favor of the bondholders. They were sold as straight State bonds. Prior to the war I do not think there was any difference in the market price or value of bonds belonging to the different series of State bonds issued. Since the war there has been a difference in the market price or value of old and new State bonds. By the old bonds I mean or understand those bonds issued previous to the war, and by the new bonds

those issued since the war, commencing with Brownlow's 9
administration, but what the difference in price was I do not know; it varied from one to two per cent. The old bonds included the "Hermitage Bonds," "Capital Building Bonds," "Turnpike Stock Bonds," and also the bonds issued to the railroad previous to the war. I have not at this time any connection with or interest in the various railroads of the State, their stocks or securities.

The amount of bonds sold by us on account of the Cincinnati, Cumberland Gap and Charleston Railroad Company amounted, as before stated, to not less than one 10
hundred thousand dollars, and may have been as much as five hundred thousand dollars, but it is a matter purely of personal recollection, and therefore not accurate.

Complainants by their solicitor except to the whole of the foregoing deposition, upon the ground that the questions and answers are wholly irrelevant to the issues raised by the pleadings.

T. S. WEBB,
Sol'r, &c. 11

And further this deponent saith not.

JNO. J. CRAIG.

12

Deposition of Columbus Powell.

CALVIN AMORY STEVENS,

vs.

MEMPHIS and CHARLESTON R. R. Co., and others.

1

Taken Sept. 26th, 1879, at Knoxville.

I am about fifty years of age, and reside in Knoxville, Tennessee. I lived in New York City for four years after the war, from 1865 to 1869. While living in New 2
York City I was a member of the firm of C. Powell, Greene & Co., Bankers and Commission Merchants. My firm sold a large number of the bonds of the State of Tennessee 6 per cent. coupon bonds for account of the East Tennessee and Virginia, Rogersville and Jefferson, Knoxville and Kentucky, now Knoxville and Ohio, Knoxville and Charleston and Mississippi Central Railroad Companies; and in addition to said companies, we sold bonds for individuals and bankers; said bonds were mainly sold in the Board of Brokers, through a broker to a mem- 3
ber or members of that board; occasional sales were made to individuals privately. The mode of selling bonds through the Board of Brokers in New York, was and is as follows: whenever we had State bonds for sale on behalf of our customers, whether railroads, private individuals or bankers, we gave an order to our broker to sell Tennessee bonds, 6 per cent. coupon bonds payable to bearer; we did not give him any representation that the bonds were issued to railroads or for what purpose, nor did we ever give him numbers of the bonds; our broker 4
would offer said bonds when Tennessee bonds was called

on the list of stocks and bonds by the President of the Board, and receive such bids from other members of the board as he was willing to accept, reporting the sales to our office when we could deliver according to contract, as follows, if for cash, deliverable on the day of sale, if on time, deliverable on the day fixed in the contract, so that neither the broker who bought nor the person for whom he bought, ever knew any thing in regard to the bonds, except that they were Tennessee six per cent. bonds, did not even know their numbers, or for what purpose they were issued, nor did he even see the bonds until they were delivered in final consummation of the sale. Our broker who sold the bonds did not even know anything about them except that they were Tennessee 6 per cents. And the bonds although numbered as all Tennessee bonds were, had nothing on them to indicate or show for what purpose they were issued, or to what railroad, except that they specified under what act of the Legislature they were issued. I mean in brief, that the bonds were sold as straight Tennessee State bonds, and that there was no representation, claim or suggestion made by the seller or buyer that they carried any lien on the property of the railroad company in favor of the bondholders. Bonds were frequently interchanged and loaned between the railroads, so that I myself did not know to what railroad the bonds were issued which I was selling.

In all my New York experience, and I suppose I was one of the largest sellers of Tennessee bonds for account of railroads and others, I never once heard the question raised that the bondholders could look to, or had any lien upon the railroad property belonging to the company to which the bond was issued. Had frequent conversations with holders of old and new bonds, who would consult me about the payment of interest on the bonds by the State, and in all these conversations the point discussed was what the sense of the people of the State of Tennessee as to the payment of the interest on said bonds, and never heard any suggestion or allusion to

a claim of a lien on the property of the railroad companies 9
of the State in favor of the bondholder.

I do not think that two millions of dollars is an over-estimate, but rather an under estimate, of the amount of Tennessee State bonds we sold while in business in New York City. I mean Tennessee sixes. The bonds were issued to the railroad companies by the State just as they applied for them, taking up the number at the number last issued. There was no mode of classification as to numbers of bonds adopted by the State authorities in issuing them so as to identify and distinguish the bonds 10
issued to railroads, or any particular railroad, from the bonds issued by the State for any other purpose than for the railroads. In other words, there was no set of numbers for each particular railroad, or for all the railroads, but there was one common series of numbers for all purposes; therefore it was impossible for an outsider, seller or broker in New York, to identify any Tennessee State bond coming to him there as a bond issued in favor of any railroad.

There was no difference in the price of Tennessee State 11
bonds, as sold on the same day, either for the East Tenn. and Virginia Railroad, a road of 130 miles in length, solvent, completed, and with full connections, and the "Knoxville and Kentucky Railroad," 40 miles, and incomplete and without connections, "The Rogersville and Jefferson Railroad," 16 miles in length, and incomplete, and the "Knoxville and Charleston Railroad," 16 miles in length and incomplete, the three latter all being insolvent; nor the Mississippi Central Railroad, complete and with full connections, running 250 miles across the 12
State of Tennessee.

I have no connection with nor interest in any railroad of the State, nor their stocks or securities.

It was a well known fact that these short insolvent railroads received twice as many bonds from the State per mile as the solvent roads, and yet the bonds on the market sold at the same price, as my books will show; and I give

the following illustrations of actual sales from my books: we sold through our broker, in the Board of Brokers in New York, on Sept. 20, 1866, $80,000 of Tennessee bonds at 71¾, 72¾, and 73, and we delivered in consummation of these sales bonds indiscriminately from the following roads, "E. T. & Va.," "Knoxville and Kentucky," and "Rogersville and Jefferson." This is only an illustration of what frequently occurred, and in one instance sold in the same manner $100,000, in which the bonds of the Mississippi Central Railroad were delivered in common with the bonds of the railroads above mentioned and at the same price.

The reason for the name of Old and New Tennessee sixes was on account of the old carrying with them five past due coupons, when the new sixes were placed on the call of the stock board; that custom was continued after the coupons were paid or funded by the State, when the difference in the market value of the old and new was reduced to a merely nominal difference.

All six per cent. State bonds issued prior to 1860, whether to build the Capitol, buy the Hermitage, pay for the State's stock in banks or turnpikes, or to railroads under the Improvement Acts, or for any other purpose, were called old Tennessee sixes, and without regard to what they were issued for, was a good delivery in the New York market, and at the same price.

Before the war the bonds issued by the railroad companies of Tennessee, with a first mortgage lien on the property of the roads and endorsed by the State, did not bring as high a price in the market as straight State sixes issued to aid the railroads or other purely State purposes. The reason for this is that the credit of the State was so high as through her fiscal agent, the Bank of Tennessee, she promptly paid her interest every six months in New York City. No doubt or apprehension was either felt or expressed as to her ability and promptness to pay her interest; while in the vicissitudes of railroad projects there was always doubt, and no such confidence did or could exist, and not-

withstanding the State endorsement, it was secondary and 17
it was felt that in case of default on part of the railroads, the State would delay until the lien on the railroad property in favor of the bondholders was enforced and exhausted before she would discharge her secondary liability.

Wm. G. Swan and I, as directors and fiscal agents of the Knoxville and Kentucky Railroad, went to New York in 1860, and sold some $30,000 to $40,000 of the first State bonds issued to that company; we sold them through brokers on the public market as straight Tennessee bonds; 18
no representations were made by us, nor any inquiries or questions raised as to there being any lien on the railroad in favor of the holders of the bonds sold by us. We never dreamed that such a fact would have enhanced or affected beneficially the market.

And further this deponent saveth not.

COLUMBUS POWELL.

19

20

Deposition of R. C. Jackson.

THE UNITED STATES OF AMERICA, }
Eastern District of Tennessee, } ss.: 1

Be it remembered, that, on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, in the city of Knoxville, within said district and the Sixth Circuit, was produced, and personally came, R. C. JACKSON, witness on the part and behalf of the defendants in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis & Charleston R. R. Company, Complainant, and the Memphis & Charleston R. R. Company and the East Tennessee & Virginia & Ga. R. R. Company, Defendant, to depose and the truth to say in said suit; and, thereupon, the said R. C. JACKSON, being of lawful age and sound mind, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows: 2 3

I am 69 years of age, will be 70 next month, and I live in Knox County, in the suburbs of Knoxville; have been living here between nine and ten years; previous to that time I lived forty-two years in Athens, McMinn Co., Tennessee, and previous to that time in Knox County, Tenn. 4

5 I am banking at present ; have been since 1872—December; have been president, and am now cashier, of the East Tenn. National Bank ; I was connected with the East Tenn. & Ga. Railroad from February or March, 1849—first, as secy. and treasurer, then as secy. and treasurer and supt. of transportation, then as general supt.—until Sept. or Oct. 1863 ; in the summer or fall of 1875, when the road was surrendered to the government, I was made vice-president ; some time after, the time I do not exactly
6 remember, I was made general supt. of the E. T. & Ga. and E. T. & Va. Railroad Companies ; after the consolidation of these two roads, which happened prior to 1870, I acted as general superintendent until the fall of 1871 ; as agent of the railroad company I did receive bonds of the State loaned to the E. T. & Georgia R. R. Company, for building the Chattanooga and Cleveland branch.

This occurred in 1858 or 1859 ; I sold State bonds lent to this company frequently from 1853 to 1859,
7 and probably to 1860 ; I never sold any under par, and do not recollect of ever selling any at a premium, unless it was upon getting money advanced without interest upon a promise to deliver bonds to the amount of the loans at fixed future date, which I did in one or two instances which I recollect, and probably several ; in selling such bonds I represented them as straight Tennessee State bonds, resting on the faith and credit of the State alone for their payment, and I never said or represented
8 that there was any statutory lien on the property of the railroad in favor of the holder or to secure the bonds ; no purchaser ever claimed or intimated to me that any other person was liable for the redemption of the bonds but the State ; all the bonds I sold I negotiated or sold in person, and not through a broker or banker ; within my knowledge, in

negotiating the bonds, no representations were 9
made by the company or any of their authorized agents to the effect that the bonds were liens upon the road, in favor of the holders of the bonds, and I never heard of such a thing until within the last two or three years.

All the State bonds I received during the years 1858 and 1859, all that I sold as above stated from 1853 to 1859 or 1860 were coupon bonds of the State of Tennessee, payable to blank or bearer. No system of marking or endorsing these bonds was 10
adopted or resorted to by me or the company, as I know of, as a means of identifying these bonds as the bonds loaned by the State to the company. My recollection of our method of keeping the account is that when we disposed of a State of Tennessee bond we credited State bonds and charged cash. I have no recollection of ever seeing any difference in the quotation between Tennessee State bonds previous to the war, and I looked to the quotations when I was selling State bonds (I means Ten- 11
nessee six per cent. State bonds—the five per cents. were, of course, a little lower) in price. Since the war I have not particularly noticed the price of State bonds, but think probably there is a difference between what are called the old and new series. When I speak of quotation, I mean the New York quotations of market price. My recollection is that the interest account with the State was kept with the general interest account, and showed only the amount of interest due the State 12
semi-annually and its payment. We were required to pay the interest fifteen days before the first of January and the first of July of each year; we uniformly paid it to the Bank of Tennessee as the fiscal agent of the State, and the bank gave us a receipt each time as and for the interest so paid to the

State. We usually paid the interest in currency; sometimes we paid it in currency and coupons. I mean in any coupons then due or overdue of any six per cent. bonds of the State of Tennessee.

We never were required by the State authorities to limit ourselves to, or pay in coupons of, the identical bonds issued to our company, and never attempted to do so, nor to keep any accounts looking to that purpose. So too as to the sinking fund, we were never required to pay, and never made examination as to whether or not we were paying, in the identical State bonds issued to our company, or any other State bonds. In paying interest and Sinking Fund on endorsed bonds we paid the coupons and the bonds issued by the company and endorsed by the State. I never was present but once when the interest was paid to the bank, and this was in Chattanooga in 1862 or 1863; we were careful to ascertain that the bank's accounts showed the same amount of bonds as our books showed, so as to show the true amount of interest due from our company to the State; and we paid that amount in money, or in money and coupons as the interest due from the company to the State on account of the debts due for the bonds loaned the company by the State. When I said that the State would receive coupons due or past due, I meant to include the coupons which would fall due on the first days of January and July, we paying in December and June previous. In paying the interest we made no attempt to designate to the bank that the interest so paid should be applied to the payment of any coupons, or applied in any way. We were directed to make our payment of interest to "The Bank of Tennessee," and when we got our receipt from the bank for the interest paid, we considered we had done everything necessary to be done. Not to

my knowledge, and I think I would have known of 17
it if it were done, did either of the companies with which I was connected appoint anyone in Nashville, New York, Philadelphia or elsewhere to pay the identical coupons attached to the bonds issued to these companies by the State. The East Tennessee and Georgia R. R. Company paid its last interest in July, 1863, or the year before or after, and discontinued payment for several years, and neither during that period or since have I ever heard or known of any holder of the coupons attached to the 18
bonds issued to this company, presenting and demanding payment of said coupons of said company. I am a director and stockholder of the E. T., Va. & Ga. R. R. Company, and in no other way connected with it.

The amount of my stock in the said E. T., Va. & Ga. R. R. Company is $10,000 or $11,000, and I have no other interest in it.

Complainants, by their solicitor, except to the 19
whole of the foregoing deposition upon the ground that the questions and answers are wholly irrelevant to the issues raised by the pleadings, and are incompetent.

R. C. JACKSON,
T. S. WEBB,
Solicitor.

DEPOSITION OF M. T. POLK.

United States Circuit Court,

WESTERN DISTRICT OF TENNESSEE, AT MEMPHIS, TENNESSEE.

CALVIN AMORY STEVENS, FOR HIMSELF AND OTHERS
vs.
THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY.
No. 317.

Deposition of M. T. Polk, a witness for defendant, taken before me in the above named cause, in the presence of James Fentress, solicitor for defendants, and S. Watson, Jr., solicitor for complainants.

Said witness, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says:

Q. 1. State your residence, and also what office, if any, you now hold in Tennessee, and how long you have held it?

A. I live in Nashville, Tennessee, and am the present Treasurer of the State; my former residence was in Bolivar, Tennessee, where I am now.

Q. 2. How long have you been Treasurer of Tennessee?

5 A. Since the 7th day of February, 1877.

Q. 3. Has any holder of the bonds of Tennessee, prior to the beginning of this suit, applied to you, as such Treasurer, at any time, to set apart any of the revenues of the State, as provided in section 3 of the Funding Act of 1873: if so, when and who?

A. No one has made such application.

Q. 4. Has any such application been made since the beginning of this suit, or at any time?

A. No.

6 Q. 5. What amount of State revenue has come into the Treasurer's office of Tennessee each year since you have been Treasurer, which might have been set apart under the third section of the Funding Act of 1873? If you have not the exact official figures with you, give your best recollection.

A. I prefer to give exact figures, and can only do so by referring to my books in my office at Nashville, which I will do, and send the sworn certificate next week; if the third section of the Funding Act of 1873 contem-

7 plated appropriating all the revenue received into the Treasury, first, to the payment of interest on the funded and registered bonds of the State, then to the payment of interest on bonds held by educational institutions, and the school fund of the State, the Treasurer received and could have paid out during 1877, $1,320,920.97; for 1878, $656,528.84; for 1879, $491,931.89.

Q. 6. Did any holder of Tennessee bonds, ever claim, prior to the bringing of this suit, so far as you know, that any bond issued by the State of Tennessee was a

8 lien, or secured by a lien on any railroad in Tennessee?

A. Never; the claim was new to me.

Q. 7. State what balance, if any, was in the Treasury of the State of Tennessee on the 24th of January, 1879?

A. On the 24th of January, 1879, there was in the Treasury at the close of business, $411,408.64.

MARSHALL T. POLK,
Treasurer of Tennessee.

STATE OF TENNESSEE, }
Davidson County. }

I, Lewis T. Baxter, clerk U. S. Ct., do hereby certify that the foregoing five pages were taken before me, as stated in the caption, and that all the answers were written by the witness himself, and that when the same was read over to him, he made oath in due form of law that the same was true.

In witness whereof, I have hereunto set my hand and official seal, this the 31st day of March, 1880.

LEWIS T. BAXTER,
Clerk.

Circuit Court, U. S. Middle Dist., Tenn. Seal.

Deposition of John S. Claybrooke.

Middle District of Tennessee:

Be it remembered, that on the 23d day of September, 1879, before me, as Examiner, appointed by the Circuit Court of the United States for said district, at my office, in the City of Nashville, Tennessee, was produced and came before me John S. Claybrooke, witness on behalf of the defendants, to depose in civil causes depending in the Circuit Court of the United States for the Eastern District of Tennessee, wherein C. A. Stevens is complainant, and the Cincinnati, Cumberland Gap & Charleston R. R. Co., *et al.*, are defendants; same, complainant, and the Knoxville & Kentucky R. R. Co., *et al.*, are defendants; and the same, complainant, and the East Tennessee & Ga. R. R. Co. are defendants (3 cases).

And the said witness, being of lawful age and sound mind, and being by me first duly cautioned and sworn, deposed as follows. Said deposition was taken by consent of counsel for the complainants and the defendants, and in their presence, and by me reduced to writing in their presence, and in the presence of the witness.

Said JOHN S. CLAYBROOKE, being sworn, deposes as follows:

I was president of the Tennessee & Alabama Railroad from 1852 to 1857, and then from 1859 to 1866; during the first period of my presidency, in June or July, 1854, my company received by me from the State of Tennessee 300 bonds of the State, as a loan

5 to the company, under the Act of February 11, 1852, and the amendments thereto, each bond for $1,000, with coupons for the semi-annual interest attached thereto.

These bonds were sold by an agent of the company in New York, under my instructions, and were sold at par, and the proceeds were used in strict accordance with the requirements of the statute.

I sold some of the bonds issued to my company
6 by the State to Mr. Carter, and also to the Bank of Tennessee, at par. I never instructed or represented to the agent who sold these bonds in New York that there was any lien on the property of the railroad company in favor of the holders of the bonds, but I instructed him to sell them, and the bonds I also sold. I sold them as straight Tennessee bonds. I hereto attach my report of 1855 to the stockholders of my company of the financial operations of 1854 as "Exhibit A" to this, my deposition, and
7 adopt its statements as true.

I am acquainted with the methods of making the semi-annual interest payments on the amount of bonds loaned to us by the State.

We paid in money into the Treasury of the State or the Bank of Tennessee the amount of interest due from us to the State, and we never were required or attempted to adopt any system whereby to secure the applications of these payments to the coupons attached to the bonds loaned to our com-
8 pany.

But whenever we retained bonds issued to us by the State beyond the time when the coupons fell due, we paid this over-due interest by clipping off the coupons and returning them to the State. These were the only instances that we ever attempted to pay the identical coupons of the bonds issued to our company.

I know that we did pay our sinking fund before 9
the war, and we paid it in other bonds than those issued to us, and we never attempted to pay in the identical bonds issued to us by the State; there was no such requirement. We kept a description of the bonds which we paid into the sinking fund, but we did not keep the numbers of the bonds issued to us. We never adopted any system to classify or identify the bonds issued to us by the State for any purpose.

During the time I was president, although we did 10
not pay our interest during the war, no holder of the bonds issued to us ever presented an over-due coupon on any of such bonds to me, or any other agent of the company, and demanded payment of the same.

On *cross-examination*, the witness testified:

That the receipt he gave did contain the numbers of the bonds issued to him, a copy of which is hereto attached and marked as "Exhibit B." 11

I live near Triune, Williamson County. I am not a stockholder in the Decatur Railroad Company. I am not a director of the road, but was a director up to 1870, or until it was leased to the Louisville & Nashville Railroad Co.

I never made any payments of interest on the State bonds myself. They were made by the treasurer, Frank Hardeman. They were paid into the Bank of Tennessee is my recollection. I expect that the treasurer's books are in the hands of Seay. 12

Whenever the treasurer of our company notified me that the interest was about due I raised the money. Sometimes had to borrow it.

Of all the bonds issued by the State to the Tennessee & Alabama Railroad Company, I sold myself the following amounts: I sold about twenty thousand dollars of said bonds to the Bank of Ten-

13 nessee, at Nashville, and about twenty-five thousand dollars of said bonds to Daniel F. Carter, a citizen and resident of Nashville, Tenn. These are all of the said bonds I sold myself. These were the only sale of said bonds made in Tennessee that I know of. The rest of the bonds were deposited in the Manhattan Bank, in New York. Mr. Morrison, the cashier of the Manhattan Bank, acted as agent of my company in disposing of the bonds deposited in said bank. I do not know that he made any
14 representations concerning the bonds deposited in said bank. One hundred and forty-three of the 300 bonds issued by the State to the Tennessee & Alabama R. R. Co., as stated as above, were reserved by the company to pay a debt due Thompson & Forman for iron rails, manufactured and sold by them to the company. Said firm was doing business in England; and 140 of the 143 bonds were paid to said firm in satisfaction of their debt, at par, some time in 1855. On the bonds so held by the company
15 and not disposed of immediately, the interest was paid by cutting the coupons from each bond fifteen days before said coupons were due. They were cut off by me and handed to our treasurer, who paid them into the Bank of Tennessee.

I was appointed by the Governor as agent for the State in disposing of the bonds issued by the State to the Tennessee & Alabama Railroad Company, but never acted as such agent.

In January, 1855, there was a meeting held in the
16 City of Nashville, of presidents and other officers of the railroad companies in Tennessee, and of companies whose roads lay partly in Tennessee and partly in adjoining States, which were entitled to receive Tennessee State bonds under the Internal Improvement laws of the State.

In this meeting it was determined to appoint three gentlemen, who were to act as agents of the

railroad companies entitled to receive Tennessee 17
State bonds under the Internal Improvement Acts. The gentlemen so designated were myself, Campbell Wallace, then President of the East Tennessee & Georgia Railroad Company, and Sidney Smith, President of the Mobile & Ohio Railroad Company.

These last-mentioned gentlemen were also to be appointed and commissioned by the Governor of the State as State agents to dispose of the State bonds under the provisions of the Internal Improvement Acts. I know that the Tennessee & Alabama Rail- 18
road Company ratified the selection of these gentlemen for the above purpose, and gave them a written power of attorney to act as agents for said company, in disposing of said bonds. And I am satisfied that the majority of the railroad companies in the State also ratified said arrangement and appointed said gentlemen as their agents.

The Governor of the State afterwards appointed and commissioned these three gentlemen as State agents, in accordance with arrangement made at 19
Nashville. Mr. Wallace declined to act as agent under either appointment, but Mr. Smith and I did accept the appointments. It was our intention to go to Europe to carry out the objects of our appointment.

Mr. Smith did go to England. I went to New York with the intention of joining him in England, but found it impossible to leave home, and therefore the scheme fell through entirely, and no action was taken in the matter. 20

Sidney Smith is dead, and Campbell Wallace now lives in Atlanta, Georgia, as I am informed.

Frank Hardeman, the former treasurer of the Tennessee and Alabama Railroad Company, is dead.

In the report made by me as president of the Tennessee & Alabama Railroad Company in 1856, to

21 the stockholders, the following language was used by me:

"In addition to the reasons above suggested in de-
"laying and not pushing forward the enterprise as
"rapidly as we would desire, we might mention
"the great stringency which has prevailed for sev-
"eral years in the monetary affairs of the country,
"which has been especially so in regard to foreign
"capital, upon which we are more or less depend-
"ent in finding sale for State bonds and other rail-
22 "road securities."

Also, on page 10 of the same report, the following language is used:

"The war between Prussia and Allied Powers of
"England and France having ceased, and peace be-
"ing restored, we may look forward as a conse-
"quence to a healthier condition of monetary af-
"fairs, and a larger amount of foreign capital seek-
"ing investment in American securities, and there-
23 "by we will meet with a more ready sale for State
"bonds, and other railroad securities."

In the report of Frank Hardeman, treasurer of the Tennessee and Alabama Railroad Company, to the stockholders, dated August 6th, 1855, under the head of disbursements is the following item:

"State Coupons..... $4,770 00"

In the treasurer's report, dated July 26th, 1856,
24 under the head of "disbursements, is the following item:

"State Bond Interest..... $22,972 50"
"Davidson Bonds..... 549 48"

The county of Davidson took stock in the Tennessee and Alabama Railroad Company to the

amount of $200,000.00, for which the county issued its bonds payable to and endorsed by the railroad company, upon which bonds the railroad company was liable for the payment of the principal and interest, on failure of Davidson County to pay at maturity, and upon notice to the company. 25

We never received any such notice.

In the report of said treasurer of the company to the stockholders dated July 31st, 1857, under the head of

"TREASURER. 26

"Dr. Cr.

"By Cash, Davidson Bonds, $ 918 50
" " State Bonds..... 18,180 00

During the year 1856, the Tennessee and Alabama Railroad Company issued about $200,000 of its own bonds, with coupons attached for interest, to secure which the income of the road was pledged, after paying all expenses and prior incumbrances."

In the treasurer's report to the stockholders dated June 30th, 1858, under the head of "Disbursements" are the following items: 27

"Cash paid State Coupons.....$20,758 50
" Company " 1,645 41

Below this table are the following items:

"Bonded Debt—State Bonds.....$771,000 00
" Company " 46,000 00

When the 43 State bonds now due to the company, but not issued, are received, the bonded debt will be as follows: 28

State Bonds received.....$771,000 00
" " not " 43,000 00
Company Bonds..... 46,000 00

$860,000 00

29 In the President's report to the stockholders in 1859 is the following:

"BONDED DEBT.

"Tennessee 6 per cent. Coupon Bonds,	$846,000 00
"Tennessee and Alabama Railroad "Bonds Endorsed by the State...	14,000 00
Total.....	$860,000 00

In the Treasurer's report of 1860 is the following:

30

"Dr.	TREASURER.	Cr.
"	State Coupons.....	$51,300 12
"	Coupons Co. Bonds....	424 29

The Tennessee and Alabama Railroad was finished during the year 1860.

The first payment made by the Tennessee and Alabama Railroad Company on its Sinking Fund account was in 1859, at which time it paid $6,000 to
31 the Sinking Fund Commissioners. The reports of the treasurer of the company show that no payment by said company on the Sinking Fund account due on the 1st of January, 1860.

The treasurer's report of the Tennessee and Alabama Railroad Company, made in June, 1861, for the twelve months previous contains the following:

STATEMENT

32 "Of the Treasury of the East Tennessee and Ala-
"bama Railroad Company for the year ending June
"30th, 1861.

"Dr.	TREASURER.	Cr.
By cash Sinking Fund		...$3,600 00

There were no reports made by the President or

other officers of the company after 1861, until after 33
the war. The above amounts of $6,000 and $3,600 are the only payments shown by the reports of the treasurer of the company to have been made by said company on the Sinking Fund account.

I make this last statement from an examination of the reports of treasurer from the year 1853 up to and including the report for the year ending June 30th, 1861, with the exception of the report of 1854, which I have not examined, but the report of 1862, which is not before me, may include all the Sinking 34
Fund due the State anterior to that period.

In the treasurer's report, dated August 6th, 1866, here exhibited to me is the following :

"In March, 1863, the safes of the company were broken open and some of the books and papers mutilated and destroyed ; the loss to the company by the books and papers and notes will be inconsiderable, as they can be restored by diligence and labor in time for the purpose of the company ; a 35
small amount of money and two (2) bonds, one State and one Davidson County bond, and some loose coupons were also taken from the safes. The numbers were also lost, so that there are no chances to recover these." The numbers were lost with the bonds and coupons themselves.

I don't suppose that he kept any account of the numbers ; I certainly never instructed him to do so. R. H. Bradley, Secretary of the Tennessee & Alabama Railroad Company for some years before the 36
war, is now living at Franklin, Tennessee.

Re-examination :

The bonds that were loaned to my company by the State were payable to bearer, and were not marked or endorsed in my name nor in the name of my company so as to indicate that they had been

37 loaned to the company, but they were issued and passed to us as bank notes are. Many of the bonds issued to us we did not sell immediately, but retained them longer than the period of the falling due of the first coupons.

The witness being asked the following question : "Whether the language quoted in your answer "to cross examination from your report of 1856, "and which language is as follows ; 'State bonds "'and other railroad securities.' Now, did you
38 "mean by this expression to designate or charac- "terize State bonds as railroad securities?"

(Complainant by counsel excepts to the foregoing question, because it seeks to elicit from the witness an answer which will attempt to construe the language used. This is a matter for the Court and not the witness.

S. Watson, sol'r for compl't.)

39 The witness answers as follows : I meant to designate the State bonds as entirely distinct and different from the railroad securities, by which latter term I meant to include the company bonds and Davidson County bond that were a subscription to the road.

I am neither a stockholder nor director in the Tennessee and Alabama Railroad Company, but I am an original stockholder and holder of 10 shares in the Nashville & Chattanooga Railroad Company. I understand the 10 shares have been multiplied.

40 The items quoted in the cross-examination from the Trustees' report of 1865, under the head of "Disbursement," as follows :

State coupons.....$4,770.00.

I do not know what it means, unless that it designates the amount of the interest paid to the State. I know that we never did pay the coupons attached

to the identical bonds issued to us, except in the in- 41
stances I have already mentioned, where we held the bonds past the time or to the time when a coupon fell due; then we clipped them off and paid them to the Bank of Tennessee on account of our interest. I know that I did not, and none of the company's officers ever did by my instructions, attempt to hunt up and pay the coupons attached to the identical bonds issued to our company in the hands of others. The two following items quoted in the cross-examination from the Treasurer's report 42
of 1856 and 1857, viz.:

DISBURSEMENTS.

Paid to Davidson Bonds.....	$549.48
By cash.....	918.50

These two items cannot designate payments by our company on Davidson County bonds as debtors, for we never did pay any Davidson County Bond in the place of that county. These two items must 43
mean some disbursements or expense on account of these bonds or some other purpose that I don't know.

The two items in the reports of the Treasurer for 1856-57, headed "Disbursements," viz. .

Paid to State bond interest..	$22,972.00
By cash State bonds.....	18,180.00

are intended to designate the interest paid in 1856-1857 to the Bank of Tennessee as the agent of the 44
State.

I mean by saying it was the agent of the State that it was the agent of the State to receive the interest on the State bonds due from the company to the State, and as the agent of the State it paid her coupons both here and in New York whenever they fell due.

45 *Re-cross examination:*

When the company held bank notes it was not necessary to use any exertion to dispose of them, because they passed from hand to hand as money.

The resemblance between a bank-note and a Tennessee State bond is that both were payable bearer, and pass by delivery without endorsement and are both numbered.

It was no part of my duty as President of the Company to receive or pay out the funds of the company
46 unless specially instructed by the Board of Directors. In making the explanations I have made in the re-examinations in regard to the items in the Treasurer's report, I do not speak from my own personal knowledge of the transactions, but have given my opinion based upon my knowledge of the general conduct of the affairs of the company and its course of business.

(Complainant excepts to all that part of
47 this deposition which gives the witness' opinion in regard to the items in the Treasurer's reports, because it is not the best evidence, and the attempted explanations are based not on personal knowledge, but on inferences drawn by the witness from other facts.

S. WATSON,
Solicitor for Compl'ts.)

The income bonds of the Tennessee & Alabama
48 Railroad Company mentioned in the cross-examination, were sold generally by the Treasurer to the citizens of Williamson and adjoining counties. The county bonds issued to the company for stock were principally sold at home; only a few were sold abroad.

Re-examination:

When in my explanations on the re-examination

in chief I state that I know that my company did 49
not pay any Davidson county bonds as debtor in lieu of the county, the fact is stated on my personal knowledge and not as an opinion.

Again, when I state in the re-examination in chief as to the items "State bond interest $22,972.00, By cash State bonds $18,180.00," I state that these items represent interest paid to the State on the amount of bonds lent to us by the State, and do not represent interest paid to the holders of coupons attached to the bonds issued to us, for I can state 50
emphatically that though I presided over the meetings of the board of directors for some ten or twelve years, I never heard it even suggested that it was our duty to pay on the identical bonds issued to our company.

Counsel for the complainants desires the following questions to be asked the witness:

Q. Did you pay the item mentioned in the Treasurer's report of 1855 under the head, "State coupons, $4,470.00," or did you pay the amount in the 51
item of "State Bonds interest, $22,972.50?" If so to whom were the payments made?

A. I did not do it in person. The payments were made to the Bank of Tennessee.

Q. Did you see the payments made?

A. I do not remember to have seen it paid, though I was sometimes with the Treasurer when the payments were made.

3 Q. When you state in the re-examination that 52
these payments were made to the State; do you not mean that they were made to the Bank of Tennessee?

A. I mean that they were made to the Bank of Tennessee as the agent of the State.

And further this deponent saith not.

JOHN S. CLAYBROOKE.

53 After the attorney for the plaintiff had left my office, the said J. S. Claybrooke made the following statement, viz.: "Our company was organized by act of the Legislature to receive endorsement and guarantee of the State on our own bonds, but the company had it changed so as to make the aid of the State to the company straight Tennessee bonds, and this was done for the reason that the straight Tennessee bonds commanded a better price in the market than bonds of the company endorsed and
54 guaranteed by the State." Which said statement by agreement of counsel for parties plaintiff and defendants may be added to and made a part of this disposition above deposed to.

Attest:

Middle District of Tennessee:

I hereby certify that the foregoing deposition was taken by me and reduced to writing in the presence
55 of the witness and subscribed by him; that I am not of counsel or attorney for any of the parties to the suits in which said deposition was taken, and that the fee for taking said deposition, amounting to $4.40, has been paid to me by W. Y. C. Humes, attorney for defendants.

Given under my hand at Nashville, in said district, this 23d day of September, 1879.

56

LEWIS T. BAXTER,
Examiner, as aforesaid.

Middle District of Tennessee, ss.:

I, LEWIS T. BAXTER, Clerk of the Circuit Court for the District aforesaid, do certify that the foregoing is a full, true, and perfect copy of a deposi-

tion taken by me as Examiner at Nashville, Tennessee, on the 23d day of September, 1879. 57

Given under my hand and seal of office in Nashville, this 25th day of September, 1879.

[SEAL.]

LEWIS T. BAXTER,
Clerk.

P. 116. BOND BOOK A. 58

"Exhibit B."

TENNESSEE AND ALABAMA RAILROAD COMPANY.

$200,000.

Received of Andrew Johnson, Governor of the State of Tennessee, two hundred coupon bonds of said State for one thousand dollars each, drawing six per cent. interest, numbered from No. 916 to 1,115 inclusive, dated the 1st day of January, 1854, and falling due on the 1st day of January, 1892, 59 being a part of the first issue, being 300 bonds to said Company under the general Internal Improvement Act passed on the 11th of February, 1852, and the Act amendatory thereof passed on the 8th February, 1854, the first coupons on said bonds falling due on the 1st January, 1856.

Nashville, July 4, 1855.

JOHN S. CLAYBROOKE,
Agent of said T. & A. R. R. Co.
60

I, C. N. GIBBS, Secretary of State of Tennessee, do hereby certify that the foregoing is a copy of a receipt given by John S. Claybrooke, Agent of said T. & A. R. R. Co., for bonds of the State of Tennessee issued to said company, numbered from 916 to 1,115 inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, [SEAL.] affixed the great seal of the State of Tennessee, at the department in the City of Nashville, this 18th day of July, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRIS, sole presiding Judge of the County Court of said County, do hereby certify that Charles N. Gibbs, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

Given under my hand at office, this 18th day of July, 1879.

JOHN C. FERRIS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that John C. Ferris, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same, sole presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court at office, this 18th day of July, 1879.

[SEAL.] J. R. McCANN.

EXHIBIT TO DEPOSITION OF JOHN S. 65
CLAYBROOKE.

UNITED STATES OF AMERICA, }
STATE OF TENNESSEE. }

At a meeting of the Board of Directors of the Railroad Company, held at the office of the Company in on day of 1855, the following preamble and resolutions were adopted, viz.:

66

Whereas, The General Assembly of the State of Tennessee, by act passed the 11th day of February, 1852, entitled, "An Act to establish a system of Internal Improvements in this State," and by an amendatory Act, passed the 8th day of February, 1854, authorized the Governor of said State to issue bonds to various railroad companies, after they had organized and complied with certain conditions specified in said Act and amendments, the proceeds of said bonds being intended for the purchase or 67 iron rails and equipments. And

Whereas, It is very desirable that a permanent value shall be maintained for these securities, and to effect this object a plan has been suggested of having union and concert of action between the organized companies included in said Acts, to whom bonds have been or may be issued, by placing all of said bonds, as received, in one and the same channel of negotiation, to consist of two or more 68 Houses, of first character for financial power and influence, thereby, not only depreciation below their par value, but enabling the negotiating bankers and iron manufacturers to carry their market value permanently above par, and thus secure to this Company a greater amount of revenue from said bonds, and said bankers and iron manufactur-

ers more fully in making advances of money, rails and equipments, upon the most reasonable terms, from time to time, in anticipation of higher rates for said bonds; and whilst the several companies may be preparing successive sections of their roads for the rails, and otherwise complying in good faith with the conditions of the above-mentioned Acts. Therefore, for the consummation of said plan, and to secure to this Company the benefits to result therefrom,

Be it Resolved, By the Board of Directors of the Railroad Company (one of the roads specified in said Internal Improvement Acts), that John S. Claybrooke, President of the Tennessee & Alabama Railroad Company, Sidney Smith, President of the Mobile & Ohio Railroad Company, and Campbell Wallace, President of the East Tennessee & Georgia Railroad Company, are hereby constituted and appointed the lawful attorneys of the company (either two of their number acting and concurring), with full power and authority to enter into such agreements and covenants with bankers or iron manufacturers, as may be necessary to effect the objects set forth in the foregoing preamble and these resolutions, and for that purpose to go to New York, England, or elsewhere, as the joint agents of this company, and other railroad companies of the State of Tennessee, that act with this company in the premises.

Be it further Resolved, That the earliest practicable arrangement of this matter by the said attorneys is desired by this company, to whom said attorneys will make a report of their doings, accompanied by copies of all agreements entered into by them on the subject of their agency.

Be it further Resolved, That on receipt of said report and agreements, all bonds of the State of Ten-

nessee then held, or may hereafter be received by 73
their company from the state, shall be placed in the one channel of negotiation, as may be agreed for and as prescribed by said attorneys.

And be it further resolved, That when the joint channel of negotiation shall have been fully organized and established by agreements and covenants, as herein contemplated, the joint agency hereby created therefor shall cease and determine; and this company shall thereafter conduct its business in said channel, in accordance with such agreements 74
and covenants, by its own officers, independently of all other companies.

In witness whereof, the President and Secretary of this Company have hereunto set ther names and attached the Company's seal, this day of 1855.

President. 75

Secretary.

REMARKS.

Length of the within-named road in Tennessee, miles.

Terminations at

And connecting the railroad

with the railroad.

Estimated time for drawing bonds for 1st section of 30 miles 185 76

Estimated time for drawing bonds for 2d section of 30 miles 185

Estimated time for drawing bonds for 3d section of 30 miles. 185

Estimated time for drawing bonds for the last section of 30 miles 185

77 Total amount already drawn, $ { Total amount to be drawn for road and bridges, } $

STATE OF TENNESSEE, County. } ss.:

Personally appeared before me, Judge of the Circuit Court of County the within named President, and Secretary of the

78 railroad company, with whom I am personally acquainted, who acknowledged that they signed, sealed and delivered the foregoing power of attorney, as they were legally and officially authorized to do, on the day and year therein mentioned.

Given under my hand and seal, this day of in the year eighteen hundred and fifty-five.

79

Circuit Judge of County.

80

1

DEPOSITION OF JAMES L. GAINES.

IN THE

Circuit Court of the United States,

FOR THE WESTERN DISTRICT OF TENNESSEE, AT MEMPHIS, TENNESSEE. 2

CALVIN AMORY STEVENS, FOR HIMSELF AND OTHERS,

versus

THE CHICAGO, ST. LOUIS & NEW ORLEANS R. R. CO., ET AL. 3

No. 317.

The deposition of James L. Gaines, witness for defendant, taken by agreement of parties in the presence of JAMES FENTRESS, solicitor for defendants, and S. WATSON, Jr., solicitor for complainant, on the 24th day of March, 1880, at Nashville, Tennessee. 4

The said witness having been duly sworn to speak the truth the whole truth and nothing but the truth, deposes and says:

Question 1 by defendant. What office do you now hold in Tennessee, and how long have you held it?

Answer. I hold the office of Comptroller of the State of Tennessee, and have held it since February, 1875.

Q. 2. Was a Receiver appointed by the State or any of the authorities thereof of the Mississippi Central Railroad; and, if so, when, and who was appointed?

A. Governor James D. Porter appointed R. P. Neely, Receiver of the Mississippi Central Railroad Company, in February, 1876.

Q. 3. How long did said State's Receiver remain in possession of said Mississippi Central Railroad; and what was the gross amount he collected as Receiver for the State during the time the State held said railroad?

A. The State's Receiver remained in possession of said Mississippi Central Road from the date of his appointment until the settlement of the said road's indebtedness to the State, on 28th November, 1877; a report of his transactions, as Receiver, was made by him and filed in the Comptroller's office, but the same was delivered on demand to a Legislative Committee of the General Assembly of 1879, and was never returned to the office by said committee; I am, therefore, unable to state the gross amount reported collected by him as Receiver, during the time the State held said railroad.

Q. 4. How much actual money, if any, did the Receiver for the State aforesaid pay over to you as Comptroller; give amounts and date of such payments?

A. The Receiver aforesaid did pay over to me as Comptroller, the total sum of one hundred and ten thousand dollars; the several payments aggregating this total, were made as follows:

May 20,	1876,	$10,000	Dec. 11,	1876.	$10,000
Aug. 10,	"	5,000			
Sept. 7,	"	5,000	Dec. 26,	1876,	10,000
" 13,	"	5,000	Jan. 10,	1877,	10,000
Oct. 18,	"	5,000	" 25,	"	10,000
Nov. 9,	"	5,000	Feb. 14,	"	10,000
Dec. 4,	"	5,000	" 24,	"	10,000
			Apr. 11,	"	10,000

Q. 5. What was done with said $110,000 in money so 9
paid into the State by said Receiver?

A. It was paid into the State treasury like any other funds or revenue due the State on my receivable warrant to the State Treasurer, who gave his receipt to the Receiver.

Q. 6. Was there any proposition to settle the interest past due by Mississippi Central Railroad with the State, or propositions looking to relieving the said railroad from the State's Receivership; if so, did the State authorities accept such proposition? 10

A. Propositions were made to settle the past due interest and the sinking fund account of the Mississippi Central Railroad, but the State authorities declined to accept said proposition or to surrender the road until the settlement of the whole debt due the State by the road.

Q. 7. Were any representations made by the State authorities of Tennessee to the purchasers of the Mississippi Central Railroad, prior to their purchase, as to State's lien, substitution bonds, etc.; was any suggestion made as to how the purchaser might discharge the debt 11
claimed by the State against said railroad under her internal improvement laws; if so, state them?

A. I remember conversations had with Governor Porter in this connection, and we agreed, and it was so represented to the representatives of the purchasers, that the State had an exclusive lien on the road and its property to the extent of its indebtedness to the State, and that on payment of this indebtedness the purchasers would be substituted to the State's lien; that said indebtedness could be paid in any series of the bonds of 12
the State which were then at a discount in the market.

Q. 8. Did said purchasers afterwards buy the Mississippi Central Railroad; and if so, did they act upon the representations of the State authorities aforesaid; if so, state what was done?

A. The said parties did purchase the Mississippi Central Railroad on these representations, and under mort-

gage of 8th November, 1877, made by Chicago, St Louis & New Orleans Railroad to Adolphe Schreiber, James Fentress and L. V. F. Randolph, Trustees, issued eleven hundred and ninety-nine mortgage bonds, for one thousand dollars each, which they delivered to me as Comptroller of the State of Tennessee, and they also delivered to me eleven hundred and ninety-nine bonds of the State of Tennessee; these State bonds were canceled by me, and filed in the Comptroller's office; the mortgage bonds were redelivered to the Trustees under said mortgage after having been endorsed by me, on the face of each of said bonds, in the following words:

"STATE OF TENNESSEE,
Comptroller's Office.

"I certify that the Chicago, St. Louis & New Orleans "Railroad Company has this day liquidated the indebt- "edness of the Mississippi Central Railroad Company to "the State of Tennessee for State bonds issued pursuant "to law, under the statutes of the said State, to establish "internal improvements, and that this bond is substituted "for the same amount of indebtedness of the said railroad "company to the State, and the holder of the said bond "is hereby subrogated to and secured by the lien held by "said State, and to all the other rights and remedies re- "served by the State in the statutes upon the railroad "and property of the said Mississippi Central Railroad "Company. This bond is one of 1,199 bonds, and is ex- "ecuted and issued, and by virtue of law takes the place "of a bond of the State of Tennessee, and is a First "Mortgage Bond.

"November 28, 1877.

"JAS. L. GAINES,

"*Comptroller of the State of Tennessee.*"

Q. 9. What State officers, if any, decided as to whether the State bonds presented by said Trustees or

the defendant, the C. St. L. & N. O. R. R. Co., to you in payment of said debt, were the proper bonds to be so received under the Internal Improvement Acts of Tennessee? 17

A. By the Governor, Secretary of State, and myself as Comptroller, it was decided that said State bonds were the proper bonds to be received in payment of the said debt, of the Mississippi Central Railroad, and the bonds were so received.

Q. 10. What relation did the Mississippi Central Railroad spoken of above, bear to the Mississippi Central & Tennessee Railroad Company? 18

A. The railroad was known as the Mississippi Central & Tennessee Railroad, up to the year 1859, and after 1859, the same railroad was known as the Mississippi Central.

Q. 11. Did you, as Comptroller, execute and deliver a receipt for the amount of Tennessee bonds paid you as aforesaid, and in such receipt mention the $110,000 paid the State by the Tennessee Receiver; if so, file a true copy of said receipt with this your deposition, making it an exhibit thereto? 19

A. I did execute and deliver such receipt, and herewith file a correct copy of the same, marked Exhibit No. 1.

Q. 12. Did the Governor and Secretary of State execute and deliver an acquittance and assignment to said defendant, the Chicago, St. Louis & New Orleans R. R. Co., or its Trustees, of date 28th of November, 1877?

A. The Governor and Secretary of State did execute and deliver an acquittance and assignment to said defendant, the Chicago, St. Louis & New Orleans R. R. Co., or its Trustees, of date 28th November, 1877? 20

Q. 13. Do you know Peter Geddes of New York, member of Geddes & Smith, and also member of the "Committee of Tennessee Bondholders?"

A. I do.

Q. 14. Did you receive a letter from said Peter Geddes,

dated August 1st, 1877, and one of August 23d, 1877, and one of August 27th, 1877, and one of August 29th, 1877; if so, please fiel each of said letters, and make them part of this your deposition?

A. I did receive letters from the said Peter Geddes, of dates named, and herewith file copies of same, marked Exhibits Nos. 2, 3, 4 and 5 respectively.

Q. 15. In his letter aforesaid of August 1st, 1877, to you, as Comptrollor, he says:

"The parties in interest will be prepared to pay off the "debts of the Mississippi Central to your State, just as "soon as it is safe for them to do so."

What did he mean by "debts of the Mississippi Central to your State," and who did he mean by "the parties in interest?"

A. By "debts of the Mississippi Central to your State" he meant the amount of bonds issued by the State in aid of said road under the Internal Improvement Acts; and by "the parties in interest" he meant the parties who proposed to purchase the road.

Q. 16. In Peter Geddes' letter to you of August 27th, 1877, he says: "I have just had an interview with Mr. "Osborn, who reports that in thirty days the parties in "whose interest the Mississippi Central was bought in "the other day will receive a confirmation of their pur- "chase. It is quite well understood here that so soon as "they can do so with safety they will pay off the lien of "the State of Tennessee on the Mississippi Central, and "*that* they now think they can safely pay it off sixty "days hence." Who is the Mr. Osborn referred to in said letter?"

A. William H. Osborn is President of the Chicago, St. Louis & New Orleans Railroad Company, who executed the said mortgage of 8th November, 1877, as such President.

Q. 17. Is Peter Geddes, of whom you have spoken, the Peter Geddes who is a member of the "Committee of Tennessee Bondholders" of New York, of which Committee complainant was the Secretary in 1877?"

A. He is. 25

Q. 18. On the 28th November, 1877, when the State of Tennessee, through its officers, required the payment of $1,199,000 and interest from the purchasers of the Mississippi Central Railroad Company, how many of the bonds claimed to have been originally issued to said road or its predecessor, the Mississippi Central & Tennessee Railroad Company, were before that time paid and then in possession of the State canceled, and how many were then outstanding?

A. I cannot state positively the number of the bonds 26
outstanding November 28th, 1877, which had originally been issued to the Mississippi Central Railroad Company, but I am satisfied that at least half of them had been paid in and canceled and deposited in the archives of the State.

Q. 19. Do you know whether the holders of bonds of the State of Tennessee funded their past due coupons and past due bonds under the terms of the Funding Act of 1865; and if so, were the coupons of different series of bonds, capitol, hermitage, agricultural bureau, turnpike 27
bonds and bonds issued in aid of railroads, kept separate, or were they confused in the new bonds issued therefor?

A. From the number and amount of the bonds issued under the Funding Act of 1865, I am satisfied that nearly or quite all the past due interest on all the then outstanding bonds of the State was funded, including the coupons from all the series of bonds issued prior to the war; the coupons from the bonds issued in aid of railroads were not kept separate from the coupons of the bonds issued for other purposes; as a matter of fact the 28
record of the funding transactions under the said Act of November, 1865, does not show what particular coupons were funded, but simply shows that so many coupons, amounting to a certain sum, say $1,000, or the multiple of $1,000, were funded into one bond or into as many bonds as there were multiples of $1,000.

Q. 20. Please state, if you know, whether the holders

29 of all series of bonds of Tennessee accepted the provisions of the Funding Act of 1873, and funded their past due coupons and registered their bonds under said act?

A. They did.

Q. 21. Please examine the funding books and records of the office of Comptroller of Tennessee and state who had bonds 3623, 3734, 3748, 3826, 3879, 4630, 4652, 4745, 4840, 5511, each issued January 1st, 1856, except last bond, and that January 1st, 1857, registered under the Act of 1873 aforesaid, and the date when each was reg-
30 isterd?

A. Below I give a statement showing the date of registration of each of the several bonds mentioned, and for whom each bond was registered:

No. 3623 was registered March 24, 1874, for Miller & Franklin.
" 3734 " Nov. 20, 1878, " Jno. B. Manning.
" 3748 " Nov. 20, 1878, " Jno. B. Manning.
" 3826 " Dec. 18, 1873, " Newton White, Pulaski, Tenn.
" 3879 " Nov. 19, 1873, " First National Bank, Nashville, Tenn.
" 4630 " Dec. 19, 1874, " Carolina Life Insurance Company.
" 4652 " May 1, 1874, " Lord & Taylor.
" 4745 " April 1, 1874, " Whitehouse & Co.
" 4840 " Feb. 11, 1874, " First National Bank, Nashville, Tenn.
31 " 5511 " Jan. 13, 1874, " E. Goodwin, N. Y.

Q. 22. Were there not State bonds authorized and actually issued under several different acts passed at the session of the Tennessee Legislature of 1851-2?

A. There were two or more acts passed at the session of 1851-52 under which bonds were authorized to be issued, and were actually issued.

Q. 23. Please state the amounts of Tennessee bonds and coupons paid by railroads in settlement of their debts under the internal improvement system of Ten-
32 nessee, beginning with the payment by the Louisville & Nashville Railroad Company in 1865; I do not mean sinking fund and interest, but final settlement by railroads of the debt and lien claimed by the State; also the assessed values of property in Tennessee in January, 1852, and in 1860, and in 1867; and the amount of bonds of State outstanding in January, 1852; and whole bonded debt of the State prior to settlement with railroads?

A. Following is a statement of the names of the several railroads which retired their debts to the State of Tennessee, and amount of same, *exclusive of sinking fund and interest;* also the names of the several railroads that were sold by the State, and the amount brought by each: 33

RAILROADS THAT RETIRED THEIR DEBTS, AND THE AMOUNT OF SAME.

Louisville and Nashville, Nov. 17, 1865...	$560,500.00
East Tennessee, Virginia and Georgia, Aug. 1, 1870.....	3,916,315.00
Nashville and Decatur, March, 1871.....	2,465,176.00
Memphis and Ohio, May 25, 1871.....	2,396,110.00
Mobile and Ohio, Jan. 1, 1872.....	1,785,246.00
Nashville and Chattanooga, Jan. 1, 1874..	364,165.00
Memphis and Charleston, July 25, 1877...	1,671,916.25
Mississippi Central, Nov. 28, 1877.....	1,199,180.00
Mississippi and Tennessee, Jan. 16, 1878..	299,714.00

34

RAILROADS THAT WERE SOLD BY THE STATE, AND THE AMOUNT BROUGHT BY EACH. 35

Edgefield and Kentucky.....	$900,000
Cincinnati, Cumberland Gap and Charleston.	300,000
Knoxville and Kentucky.....	350,000
McMinnville and Manchester.....	300,000
Winchester and Alabama.....	300,000
Rogersville and Jefferson.....	23,000
Nashville and Northwestern.....	2,400,000
Knoxville and Charleston.....	105,000
East Tennessee and Western North Carolina.	20,000
Memphis, Clarksville and Louisville.....	1,700,000
Tennessee and Pacific.....	300,000

26

The assessed value of taxable property in the State of Tennessee:

For the year 1852, was.....$177,420,305

(Including slaves valued at $63,027,716.)

For the year 1860, it was..... .....$388,936,794
(Including slaves $115,609,554); and
For the year 1867 the assessed value of the
taxable property of the State was..... $225,393,410
On the 1st of October, 1851, the total bond
liability of the State was..... $3,651,856.66
I have not at hand the official data for the exact amount of the outstanding liability on the 1st January, 1852.

In 1870, prior to the first settlement with railroads under the Act of 1869 and of 1870, the whole bond debt of the State amounted to about $40,000,000.

JAS. L. GAINES.

The complainant's counsel does not desire to ask any questions, and it is agreed by counsel for complainant and defendant that Col. Gaines may file herewith copies of the letters of Peter Geddes instead of the originals, and that said copies may be used as if they were the originals, and to have the same force; but, on request of either party, Col. Gaines agrees to produce said original letters, which he has on file in his office.

JAMES FENTRESS,
Solicitor for Defendants.

S. WATSON,
Solicitor for Complainants.

STATE OF TENNESSEE, }
Davidson County. }

I, E. R. Campbell, Commissioner of the Circuit Court, U. S., for Middle District of Tennessee, do hereby certify that the foregoing deposition of James L. Gaines, of 19 pages, was taken before me as recited in the caption in presence of counsel for complainant and defendant, and that witness wrote his own answers, and the said deposition having been read over to said witness, he made oath in due form of law that the same was true.

In witness whereof, I have hereunto set my hand and 41
seal, this the 24th day of March, 1880.

E. R. CAMPBELL,
Commissioner U. S. Circuit Court,
for the Middle District of Tennessee.

Exhibit No. 1.

STATE OF TENNESSEE. } 42
Comptroller's Office. }

Receiver of the Chicago, St. Louis & New Orleans Railroad Company by the hands of Adolphe Schreiber, James Fentress and L. V. F. Randolph, Trustees, under the first mortgage of said company, the sum of twelve hundred and ninety-three thousand two hundred and thirty dollars, in the bonds and coupons of the State of Tennessee, which, together with one hundred and ten thousand dollars in money, heretofore received from R. P. Neely, Receiver, is in full payment and satisfaction 43
of all indebtedness of the Mississippi Central & Tennessee Railroad Company to the State of Tennessee, and also in full payment and satisfaction of all the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee.

The sum of twenty-three thousand two hundred and fifty-six dollars of the $110,000 paid in money as aforesaid, is in full of taxes on said railroad, its property and appurtenances, due said State of Tennessee for the years 1873, 1874, 1875, and 1876; and the sum of nine hun- 44
dred and thirty-two $\frac{73}{100}$ dollars, is in full of the State tax on said railroad and property for the year 1877.

The payment of the taxes aforesaid, for each of said years is made under protest, the said company insisting that said railroad and property is and was exempt from said taxation, by virtue of the charter of the Mississippi Central & Tennessee Railroad Co., Acts of 1853–4 of

45 State of Tennessee, chapter 1, sec. 13, and it is agreed that the question as to whether such taxation aforesaid, is valid and legally collectable, or whether said railroad and property was exempt from taxation for said years or either of them (in case the Attorney-General of the State does not advise the refunding of said taxes) without litigation, shall be submitted to Chancellor Cooper, or the Chancery Court of Nashville, Tennessee, and if said railroad and property is held by said court to have been exempt for those years, or said taxes improperly assessed,
46 then the money paid for said taxes shall be refunded to said company, and the fact that said taxes have been paid, shall not put said company in any worse position in any litigation as to this matter than it would have been if said taxes had been refused to be paid, until the legal questions above mentioned were settled.

JAS. L. GAINES,
Comptroller of the State of Tennessee.

47 **Exhibit No. 2.**—J. L. G.

(Private.) NEW YORK, August 1st, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville:

Dear Sr,—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so.

48 I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State, which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned—to assure the people of Tennessee that you were not here to pay of the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am therefore 49
not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which I think might be gotten up, offering to settle at say 75 per cent. of principal and interest in 6 per cent. bonds, coupons receivable for all taxes and dues to the State. If any hope were held out that a settlement can 50
he effected at the equivalent of our proposition, say 75c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and I think that with careful handling it could be carried. Of course there are always some who hold back, but I think that the great majority would take 75 per cent., under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply 51
a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts, the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 per cent., I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and the bond- 52
holders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally, I have worked hard to save the remnant of Tennessee's once good credit, and I make this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

53 If you think so advisable, you may convey to the Governor, at your convenience, the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours,

P. GEDDES,

P. O. Box 936.

Exhibit No. 3.—J. L. G.

54

NEW YORK, Aug. 23, 1877.

JAMES L. GAINES, Esq.,

Comptroller:

Dear Sir,—I duly received your esteemed favor of the 8th current.

Since then I learned that the Mississippi & Tennessee Railroad Company have voted to pay off their debt to Tennessee. This practically settles up all advances made
55 by the State to railroad companies, and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to I cannot say. They may or may not adhere to their proposition of last February.

If the people of Tennessee under any circumstances are liable to do anything disgraceful in regard to their public debt, or permit anything of that kind to be done, of which you seem to entertain fears, should a settlement not be come to this year, and the debt question become
56 one of the issues in the State canvass of next Summer, the inquiry forces itself upon the bondholders, of how much value would the reduced debt of such a people be to the holders of it?

This is a very serious question, in view of the fears you express, and of what I will now only characterize as the extraordinary legislation of last Winter. I shall be happy to hear from you in reply, at your convenience.

Mr. Smith has been travelling since the beginning of 57
July, and hence we do not hear from him.

I am,

Very truly yours,

P. GEDDES,
P. O. Box 936.

Respondent's Exhibit No. 4.—J. L. G. 58

(Private.) NEW YORK, August 27, 1877.

Hon. JAMES L. GAINES,
Nashville:

My Dear Sir.—I have just had an interview with Mr. Osborn, who reports that in thirty days the parties in whose interest the Mississippi Central was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee 59
on the Miss. Central, and that they now think they can safely pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very troublesome disorder.

Although you do not, in your note of the 8th current, give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest 60
citizens of Tennessee who must be still in the majority, would much prefer to pay the State debt in *full*, if some plan were submitted which would make it clearly possible for them to do so.

The outstanding bonds of Tennessee are mainly held by investors, by trustees, and Trust Institutions. The "margins" of speculators in and out of Wall Street have

61 long ago disappeared, and the bonds upon which they were held been sold.

Now, investors, and parties, and institutions holding in trust, prefer much any reasonable reduction of the rate of interest their investments will produce, to a reduction of the principal.

For the past four years they have been receiving lower rates of interest and smaller dividends on their investments than they had been accustomed to. Many of them, judging by the large subscriptions to government four
62 per cents. recently, have come apparently to the conclusion that lower rates of interest than formerly prevailed will hereafter permanently prevail. This is the mood in which they now appear to me to be, and it has suggested the idea that advantage might possibly be taken of so favorable a time and circumstances by the friends of Tennessee to bring about a compromise of the rate of interest on her debt which would enable her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will
63 assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable semi-annually, January 1 and July 1, in each year, coupons to be attached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred
64 years hence, and redeemable by the State at any time after six months' notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise; but if I get from you and the Governor encouragement that, if such a proposition were made by the holders of more than half the debt, it would be accepted, I will exert myself, with Mr

George Smith and other well known large holders, to 65
make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, 66
and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

Let me hear from you on receipt, and write further afterward.

Truly yours,

P. GEDDES.

67

Exhibit No. 5.—J. L. G.

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,
Nashville, Tenn.:

My Dear Sir.—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

Seeing by the morning papers that the Governors were to meet yesterday at the Continental Hotel, Philadelphia, 68
I telegraphed to Governor Porter there, asking him where a letter would reach him to-day, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

69 In case Tennessee wants to pay off her debt, it will be of great advantage to her to arrange for a low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease, or at lower cost, bought for a sinking fund than can bonds bearing full rates.

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,

70 P. GEDDES.

71

72

1

DEPOSITION OF ALBERT S. MARKS.

STATE OF TENNESSEE, COUNTY OF DAVIDSON.

2

CALVIN AMORY STEVENS, FOR HIMSELF AND OTHERS
vs.
THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY, ET ALS.
No. 317.

IN THE

3

United States Circuit Court,

OF WESTERN DISTRICT OF TENNESSEE, AT MEMPHIS, TENNESSEE.

Taken at Nashville, Tennessee, in the presence of S. Watson, Jr., solicitor for complainant, and James Fentress, solicitor for defendants.

The deposition of A. S. Marks, Governor of Tennessee, a witness for defendant. 4

Witness, being first duly sworn to speak the truth, deposes and says:

Question 1st (By Defendant's Counsel). Are you the

5 Governor of Tennessee, and if so how long have you occupied that position?

Answer. I am, and have occupied that position since my inauguration on January 17th, 1879.

Q. 2. Who was your immediate predecessor as Governor of Tennessee?

A. Hon James D. Porter.

Q. 3. Did the complainant in this suit, Calvin Amory Stevens, either by himself, or attorney, or agent, prior to
6 the bringing of this suit, make any application to you to appoint a Receiver of the Mississippi Central and Tennessee or Mississippi Central Railroad; if so, when?

A. There has been no application by Mr. Stevens to me or to the Executive Office of Tennessee to appoint a Receiver of the roads mentioned; nor has there ever been any application to the Governor of Tennessee since I have been in office, to appoint a Receiver of any railroad in Tennessee.

7 Q. 4. Has there been, prior to the bringing of this suit, any application by complainant, or any holder of the bonds of Tennessee, so far as you know, under the third section of the Funding Act of 1873, to set apart in the hands of the Treasurer any revenues of the State for payment of the interest on such bonds, as provided in said act?

A. To my knowledge there has been no such application.

8 *Cross-examination* by counsel for complainant:

Cross-Question 1. If complainant or any other bondholder had applied to you as Governor of the State to appoint a Receiver on defendant's road, would you have done so?

A. I would not.

(Defendant excepts to above question and answer as hypothetical and irrelevant.) 9

ALBERT S. MARKS.

Subscribed and sworn to before me, this March 24, 1880,

LEWIS T. BAXTER,
Clerk U. S. Circuit Court for Mid. District of Tennessee.

STATE OF TENNESSEE, Davidson County. 10

I, Lewis T. Baxter, U. S. Circuit Court Clerk, do hereby certify that the foregoing four pages of the deposition of A. S. Marks was taken before me to-day, and that said witness, after having the same read over to him, did on oath depose and say that the same is true.

In witness whereof, I have hereunto set my hand this the 24th day of March, 1880.

Seal of the Court.

LEWIS T. BAXTER,
Clerk U. S. Cir. Ct. Mid. Dist. of Tenn. 11

12

1

Deposition of Neill S. Brown.

Deposition of Neill S. Brown, witness on behalf of the defendants in the foregoing cases.

The said witness, being duly cautioned and sworn, deposes and says.

My name is Neill S. Brown; am aged 69 years, and am a practicing attorney and solicitor at Nash- 2
ville, Tennessee.

To interrogatory propounded he answers and says, that he was twice a member of the Legislature of the State, was twice or three times elected, and was once Governor of the State.

I bought among the first issue of the bonds issued for the building of the capitol, say in 1849 or thereabouts; I think I bought about $4,000 in such bonds and paid par therefor; I kept them until about the year 1854; I then invested them in a private enterprise at par; I then received from the enterprise my interest therein in bonds issued by the State of Ten- 3
nessee for agricultural purposes, *at par*, and I afterwards sold said Agricultural Bonds in 1857 or 1858 *at par*.

The prices mentioned as paid for and received for said bonds was the market or ruling price for all bonds issued by the State at the times mentioned, and it continued so for sometime afterwards, and had been at all times from the first issuance down until the approaching rumors of war.

I have no interest whatever in any bond issued 4
by the State of Tennessee; I do own one hundred

dollars in stock of the East Tennessee and Georgia Railroad, besides which I have no interest in any bond or stock of any railroad company.

I have noticed the quotations of bonds of the State of Tennessee since the war, and do not remember that any difference was made in the quoted market price of the bonds issued to the railroads under the Internal Improvement laws, and other bonds issued by the State for other purposes.

(Complainant, by solicitor, excepts to the competency of this evidence, because irrelevant to the issue ; and especially to the last paragraph, because purely hearsay and not the best evidence.

S. WATSON,
Solicitor for the Compl't.)

The State of Tennessee owned the Bank of Tennessee, and made it the fiscal agent of the State ; it was so called and so recognized ; all the revenues of the State were deposited with the Bank of every conceivable kind, and it (the bank) paid all the obligations of the State ; sometimes the balance was one way and sometimes the other.

Cross-examination :

The Union Bank of Tennessee was the fiscal agent of the State before the Bank of Tennessee was created. I never had any dealings with bonds except as above stated.

And further deponent saith not.

NEILL S. BROWN.

Subscribed and sworn to before me, this 2d September, 1879.

E. R. CAMPBELL,
Examiner.

1

Deposition of Ex-Governor James D. Porter.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mississippi Central & Tennessee Railroad Company,

2

vs.

THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY *et al.*

Before JOHN C. SWEENY, Notary Public in and for Henry County, Tennessee. 3

At Paris, Tennessee; taken in pursuance of an agreement of counsel.

Present—JAMES FENTRESS, of counsel for defendant.

EX-GOVERNOR JAMES D. PORTER, a witness produced on the part of the defendants, being by me first duly cautioned and sworn as a witness in the above-entitled suit, to testify the truth, the whole truth, and nothing but the truth, deposes and says: 4

5 1 Q. State your age and residence?

A. I am fifty years of age, and reside at Paris, Tennessee.

2 Q. Are you familiar with the past history, politics and policy of the State of Tennessee, particularly as to her system of Internal Improvements, and if so, please state your means of knowing,—the offices, if any, that you have held in said State, and when and whether her internal improvement system was or not a leading feature in her politics and
6 policy?

A. I am familiar with the history, politics and policy of the State; I am a native of the State of Tennessee, and have been an active participant in the affairs of the State for more than twenty years; I was a member of the State Legislature for the years 1859–60–61; was a member of the Constiutional Convention of 1870; during the year last named, I was elected Judge of the Twelfth Judicial Circuit of the State for the term of eight years, and
7 after a service of three and a half years I resigned and soon thereafter I was nominated and elected Governor of the State, and was again elected in the year 1876 for a second term; in these several offices I had much to do with the Internal Improvement system of the State, and in the construction of the laws providing for that system during my service as Governor; I was *ex officio* a member of the Board of Commissioners for the sale of delinquent railroads, and read critically all acts of the Legislature
8 relating to the subject; the settlement of the public debt of the State created in aid of the construction of our turnpike and railroad system was the hope and leading thought of my administration, and to aid in this settlement I made a careful examination of the several series of bonds to test in my own mind the propriety and validity of their issuance and the liability of the State for their payment;

during my term of office as Governor, the public debt, just referred to, was the leading question discussed upon the hustings, by the Press and the Legislature; In my last message to the Legislature I stated that it was "paramount to all questions of legislation that can engage the attention of the General Assembly." 9

3 Q. Please state how long the Internal Improvement system has been the leading question before the Governors and Legislatures and people of Tennessee? 10

A. It was an important question from 1829 to 1834; since the last date it has been a leading question before the people and in the legislature; the Constitution of the State, adopted in 1834, enjoined the establishment of an effective system of Internal Improvement.

4 Q. Please give an outline of the different schemes which were discussed before the people and in the Press and by the Legislature of the State of Tennessee for carrying out the Internal Improvement system of the State? 11

A. The first scheme discussed and adopted was the one inaugurated in 1829, providing for the appointment of six Commissioners of Internal Improvement, who were to determine what improvements were necessary, and what amount of money should be appropriated; this scheme continued in force until 1834, when a new constitution was adopted; under its provisions the public demanded a new system, which was provided by the Act of 1835, authorising the construction of railroads and turnpikes, and making the State a stockholder to the amount of one-third of the stock, payable in bonds of the State, in cases where the balance of the stock was subscribed by the company; by the act of 1837–8, the State took half of the stock in the improvements thereafter made, upon the same terms as provided by the Act of 1835; these acts were re- 12

13 pealed by the Act of 1839–40; by the Act of 1847–8 the State was authorized to aid Internal Improvements upon terms therein prescribed by endorsing the bonds of such companies as brought themselves within the provisions of the act. This act continued in force with some slight modifications until 1851–2, when in response to a public sentiment that had been aroused to a point of enthusiasm, a general system of Internal Improvements was provided and the railroad system of Tennessee created.

14 5 Q. Why, if you know, was each scheme abandoned and its successor adopted. Particularly, why was the scheme enacted by the Acts of Tennessee of 1847–8, Chapter CLXIX, Section 2, *et seq.*, modified by Acts of 1849–50, Chapter XLII, Section 11, *et seq*, and abandoned by Acts of 1851–2, Chapter CLI?

A. The schemes provided from 1829 to 1851–2 were abandoned as soon as they were fairly tested, because they failed to meet their promise or the

15 expectation of the country. The scheme of 1847–8, was abandoned because no market could be found for endorsed bonds at anything like their par value.

6 Q. State if you know what was and has been the practical construction by the State of the Acts of 1851–2; please answer fully?

A. The construction given to this Act by the State authorities, and by all departments of the State government has been uniform; the said Act provided for a sinking fund, to be paid by the several

16 roads to which State aid had been granted, to be used in retiring the debt thus created; under this Act the sinking fund could be, and was, paid for several years in any of the bonds of the State; the bonds issued by the State to rebuild the roads after their destruction during the late war were accorded the same dignity as the bonds issued to build the roads

before the war, and the same lien is fixed by Statute 17
upon the roads in favor of the State for both series; the State claimed and exercised the right of selling the delinquent roads without regard to the holders of the bonds, and reserved the right of doing anything necessary to protect the interest of the State; under said Act there is no provision to distingush the bonds issued to one road from those issued to any other road, and in cases of the sale of railroads or the payment of money by Receivers, the proceeds have in every instance been turned over to the State 18
without regard to the holders of the bonds of the State.

7 Q. Have you been acquainted with the market value of bonds of the State of Tennessee since 1851–2?

A. I am, and have been acquainted with the market value of our State bonds since 1851–2.

8 Q. Please state what difference, if any, was made in the money markets between Tennessee bonds: 19

(1) Issued to build the capital;

(2) To buy the Hermitage;

(3) To the Union Bank;

(4) To the Bank of Tennessee;

(5) To Agricultural Bureau; 20

(6) To Turnpike Companies; and

(7) To Railroad Companies?

A. There has been no difference in the market value of the several series of bonds named in the interrogatory, except in the instance where the

21 bonds carried only five per cent. interest, which was true of some of them; generally they carried six per cent.; all bonds carrying five per cent. were of of equal value, and all carrying six were of equal value.

9 Q. Has there ever been any difference in value in the money markets between State bonds issued in aid of insolvent railroads and those issued in aid of solvent railroads; or between bonds, issued to build the Capital, buy the Hermitage or to
22 establish the Agricultural Bureau, and either of the before mentioned bonds?

A. The bonds issued to solvent and insolvent railroads enjoy the same dignity, and there has not been the slightest difference in their market value, and both have rated in the money market at the same price as the bonds issued for the building of the State Capital; those for the purchase of the Hermitage, and those issued to the Agricultural Bureau.

23 10 Q. Do you know any railroad to which State bonds were issued which was not at the time of such issuance, or at any time since, worth the amount of the bonds issued to it; if so, give an instance; also give an instance, if there is any, in which a railroad was worth the amount of bonds issued to it at the time of such issuance and has so continued ever since?

A. The Tennessee & Alabama Railroad, the McMinnville & Manchester, the Tennessee & Pacific,
24 the Knoxville & Charleston, the Rogersville & Jefferson, the Knoxville & Kentucky, the Cincinnati, Cumberland Gap & Charleston, the East Tennessee & Western North Carolina Railroads, were never worth the amount of bonds issued to them respectively by the State, or half of the amount issued; the Louisville & Nashville, the Mississippi & Tennessee, the Nashville & Chattanooga, the Mem-

phis & Ohio, and the Nashville & Decatur, are in- 25
stances of railroads that have at all times been considered of equal or of greater value than the amount of bonds issued to them respectively by the State of Tennessee.

11 Q. Has the State of Tennessee ever defaulted in the payment of interest on all her bonded indebtedness; if so, when, and for how long?

A. The State defaulted on the interest due during the late war, and upon all instalments of interest upon the entire bonded debt (except small amounts 26
held by educational and charitable institutions) with the exceptions of about four millions ($4,000,000) of dollars of interest paid during the years 1866–7–8–9, and the instalments maturing July, 1874, January, 1875, and July, 1875.

12 Q. After the State of Tennessee had been in default on her interest, was there not at any time a difference in the market value of bonds issued to solvent railroads, and those issued to insolvent railroads, or those issued to build the capital? 27

A. The default of the State did not affect the relative value of the bonds issued by the State for any purpose or enterprise.

13 Q. Did you ever hear prior to or during your administration as Governor of Tennessee, of any holder of bonds issued by the State in aid of railroads claiming or intimating that he claimed that such bonds were a lien on the railroads to which they were issued; if so, who, and when?

A. No such claim or demand was ever made, and 28
I never heard that such a claim was made until about the time of the institution of this suit.

14 Q. How long prior to the institution of this suit did you hear of such claim of lien?

A. Within a few weeks.

15 Q. Did you, while Governor of Tennessee, have

any correspondence with the holders of Tennessee bonds, and if so, did they not in such correspondence claim that their bonds were secured by a lien on the railroads to which they were issued?

A. I had an extensive correspondence with the holders of our State bonds; not one of them intimated an opinion that the railroads were in any event liable for the bonds issued to them, or that a lien was reserved on the roads for their payment.

16 Q. Did the State at any time institute legal proceedings to enforce the lien which she reserved in her Internal Improvement laws against any railroad on account of the aid furnished it, if so, when; and were said roads sold, and if so, what roads, and when?

A. In January, 1871, the State filed a bill in the Chancery Court at Nashville, against the Edgefield and Kentucky, the Nashville and Northwestern, the Memphis, Clarksville and Louisville, the McMinnville and Manchester, the Winchester and Alabama, the Southwestern or Southern, the Knoxville and Kentucky, the Cincinnati, Cumberland Gap and Charleston, the Knoxville and Charleston, the Rogersville and Jefferson, and the East Tennessee and Western North Carolina Railroads to enforce the lien reserved by the State for the bonds issued to them respectively; sales of these roads were made at different times during the next few years succeeding the date of the filing of the bill; the last sale was that of the Knoxville and Charleston Railroad, made under my own direction in the year 1876.

17 Q. When these railroads were sold, how were the proceeds of sale disposed of by the State; state also whether any bondholder claimed that such proceeds ought to be applied to payment of his bond?

A. The roads were paid for by their purchasers in any of the bonds of the State, and they were cancelled and filed in the office of the Comptroller of the

Treasury; no bondholder claimed proceeds of these 33
sales for any purpose.

18 Q. How was the Tennessee Pacific Railroad disposed of by the State, was it sold; if not, what arrangement was made as to it?

A. The Legislature passed an Act relinquishing the lien of the State on the Tennessee and Pacific Railroad on the payment of three hundred thousand dollars ($300,000) in the bonds of the State; one hundred and fifty thousand dollars ($150,000) in
bonds was paid when the contract was made, and 34
in the year 1876 it was sold under my direction to the highest bidder at public out-cry for the balance of one hundred and fifty thousand dollars and interest, and was paid for in the bonds of the State.

19 Q. Have you any interest in the bonds of the State of Tennessee or in the stock of any railroad; state also whether you had, while Governor of Tennessee, any bonds of the State of Tennessee or any stock in any railroad?

A. I have no interest in Tennessee bonds, neither 35
have I in the stock of any railroad, and did not have during my terms of office as Governor.

20 Q. State, if you know, whether the State of Tennessee, under her Internal Improvement laws, took possession of any railroad in Tennessee by Receivers, and if so, when, and what roads?

A. Receivers were appointed for the Nashville and Northwestern, the Edgefield and Kentucky, the Mississippi Central, the Memphis, Clarksville and
Louisville, the Cincinnati, Cumberland Gap and 36
Charleston, the Knoxville and Charleston, the Knoxville and Kentucky, the Winchester and Alabama, the McMinnville and Manchester, the Rogersville and Jefferson Railroads; I cannot now answer as to the date of the appointment of Receivers, but all of the roads mentioned were in the hands of Receivers for several years except the Mississippi Central, and

they were so held and operated until they were sold under a decree of the Chancery Court at Nashville under proceedings instituted in 1871.

21 Q. State whether the State in the selection or appointment of any Receiver to take charge of a railroad under her Internal Improvement laws, in any way consulted with any holder of her bonds as to the propriety of such step?

A. I am satisfied that no holder of any bonds of the State was ever recognized as being interested in the question, and that none of them ever claimed the right of making a suggestion as to the duty of the State; in the case of the Mississippi Central Railroad, the Receiver was appointed upon my own motion, as a means of protection to the State; no holder of the bonds of the State was consulted; no one of them advised me or suggested what course to pursue, and as payments were made by the Receiver, the amount of them was passed into the Treasury without any expression of dissent or approval from the holders of our bonds.

22 Q. When you appointed a Receiver of the Mississippi Central Railroad, how many of the bonds claimed to have been issued to it and the Mississippi Central and Tennessee Railroad by the State were then outstanding? If you cannot state how many exactly, give as near as you can the amount?

A. A large number of the bonds issued to this road—about half of them—had been cancelled, when the Receiver was appointed.

23 Q. Did you appoint the Receiver and seize and hold the Mississippi Central Railroad for the amount of unpaid outstanding bonds or for the whole amount of all the debt created by the issuance of State Bonds to such road, without regard to whether the bonds issued to such road had been paid in to the State and cancelled or not?

A. In dealing with this road I paid no attention to

the fact that about half of the original issue had 41
been cancelled; the cancelled bonds had been paid in on the sinking fund account of this and other roads or paid in by other railroad companies, turnpike companies or others, in satisfaction of debts due from them to the State; and when final settlement was made by the purchaser of this road, the debt of the State, being the amount of the bonds loaned to this Company, amounting to one million one hundred and ninety-nine thousand one hundred and eighty dollars ($1,199,180) principal, with the 42
interest, was paid to the State in State Bonds.

24 Q. Did or not the State authorize sureties on the bonds of defaulting officers of the State to pay into the State any of her outstanding bonds and coupons? And, if so, were any State Bonds so paid in?

A. This authority was accorded by the Acts of 1875 and 1877 to sureties of defaulting revenue officers; a considerable number of bonds were paid in and cancelled under this authority; these pay- 43
ments were made in any series of registered or funded bonds.

25 Q. Did the State by its Receiver in charge of the Mississippi Central Railroad collect any amount of money above its running expenses? And if so, what amount?

A. The State collected from the Receiver of this road one hundred and ten thousand dollars ($110,000) in currency over and above running ex- 44
penses?

26 Q. What was done with said $110,000? Did the State hold it as a trust fund?

A. It was passed into the State Treasury as ordinary revenue, and used and appropriated in the same manner. No trust relation was recognized by the State authorities in connection with said fund.

45 27 Q. Did you as Governor of Tennessee call public attention to the fact that said $110,000, or any part thereof had been collected by the State in money from said railroad? And if so, how and when?

A. In my message to the Fortieth General Assembly of the State, delivered January 1st, 1877, I communicated the fact that the Mississippi Central Railroad had defaulted on two installments of interest due on the bonds loaned to the Company by
46 the State, and that I had appointed a Receiver, who had taken possession of the road, and that he had up to that time paid into the Treasury of the State sixty thousand dollars ($60,000) in currency. This message was copied very generally by the newspapers of Tennessee and by a number of leading papers out of the State.

28 Q. Had the holders of Tennessee Bonds been in correspondence with you at or before that time? And if so, state whether you made any mention of
47 such correspondence in the same message in which you mentioned the appointment of a Receiver of the Mississippi Central Railroad, and the payment by him as such of $60,000 to the State, as stated in your last answer?

A. I had been in correspondence with the holders of our bonds, and in the message referred to in last answer I communicated a part of this correspondence to the Legislature.

29 Q. Please file as part of this your deposition
48 said message?

(A. The message is filed herewith, marked "Exhibit 1, J. D. P.")

30 Q. I see on page twelve of said printed message that you state "Negotiations are now pending "by which the past due interest and sinking fund "due from this Company, and possibly the princi- "pal not yet due, will be paid at an early day."

Now please state whether the said message came to 49
the knowledge of the holders of Tennessee Bonds, if you know, and particularly, whether the said message came to the knowledge of the complainant, C. Amory Stevens?

A. This message did come to the knowledge of many of our creditors; I know it from the fact that in February, after its delivery, I received a communication signed by C. Amory Stevens, and more than twenty others, submitting through me to the Legislature and people of Tennessee a series of 50
propositions looking to an adjustment of the State debt, in which they propose that certain reforms recommended in said message be enacted into a law.

31 Q. Will you please file said written communication as a part of this your deposition?

A. I file the communication; marked "Exhibit 2, J. D. P."

32 Q. Did complainant (C. Amory Stevens) or any other bondholder request you, as Governor, to set apart said $60,000 to the payment of the bonds held 51
by them or in any way intimate that they, as such holders, had any claim on said fund or any fund realized from the Mississippi Central Railroad under the State Receivership? If so, state it?

A. Neither C. Amory Stevens nor any other creditor of the State ever made any request or suggestion in relation to said fund. These parties were treating with the State as their debtor, and never intimated then or at any subsequent period during my administration that the State held the relation of trustee or 52
thatthey had any claim upon said fund.

33 Q. Did you mention the fact that the Internal Improvement Debt of the Mississippi Central Railroad had been paid to the State in any of your public messages to the Legislature? If so, when? State also whether such message was brought to the attention of the holders of Tennessee bonds, if you know?

53 A. I communicated the fact, that the debt of the Mississippi Central Railroad had been paid to the Legislature in a message of December 5th, 1877, and in another message of January 6th, 1879; the Legislature was convened in extra session on the 5th December, 1877; I was in correspondence with our creditors before this call was made, and the leading ones were generally advised of my purpose to make it; Messrs. Eugene Kelly, E. D. Morgan and Company and others requested me by letter
54 to make the call, and I take it that they read my message; it was generally published.

34 Q. You speak of a very extensive correspondence between you as Governor and the State authorities of Tennessee with the holders of Tennessee bonds; please state whether they made any proposition of settlement of the whole bonded debt of the State? And if they made more than one proposition, state each, with a short chronological history of whether such proposition was entertained or
55 acted on by the State or its authorities?

A. Immediately after my inauguration as Governor in January, 1875, the creditors of the State commenced a correspondence with me in relation to the public debt; after the default was made in the payment of the interest in July of that year, this correspondence increased in volume and in interest, until the 20th of December, 1876, a number of the leading creditors of New York addressed a letter to me, asking me to recommend the appointment of a
56 commission to visit New York to confer with holders of Tennessee bonds with the view of an adjustment of the debt; I made this recommendation to the Legislature; after some hesitation and delay, and a second appeal by creditors (dated 15th February, 1877), the commission was appointed by the Legislature; this commission visited New York, and on the 8th March, 1877, met with a committee of arbi-

ters appointed at a meeting held at the Clearing 57
House on the 20th of January, 1877, and after a discussion by the two committees, the arbiters recommended an adjustment of the State debt at the rate of sixty per cent. of the total amount, and forwarded their recommendation in writing to me; after ascertaining that this recommendation for settlement was acceptable to the creditors, upon the completion of the assessment of the property of the State for taxation, I convened the Legislature in extra session, and submitted this proposition and recommended its 58
adoption with the utmost earnestness in a message dated the 5th of December, 1877, which is filed herewith as "Exhibit No. 3, J. D. P.;" after a delay of several days by the Legislature in discussing this proposition, it was clearly demonstrated that it would be rejected, and that the body would adjourn without accomplishing anything; about the 10th of December several creditors appealed to me to submit a proposition for settlement at the rate of fifty per cent. of the whole debt; I hesitated, fearing 59
that this propostion would not be acceptable to the creditors; the following day I received a telegram from C. Amory Stevens, one of the large holders of Tennessee bonds, urging me to submit the fifty cent settlement to the Legislature and assuring me that it would be acceptable to the investment holders of our bonds; thereupon, I intimated a request to the Legislature to adjourn, and immediately convened that body in extra session a second time, submitted the last-named proposition and recommended 60
its acceptance in a message dated December 12th, 1877; said message is filed herewith as "Exhibit No. 4, J. D. P.;" the Legislature adjourned without making the settlement and during the remainder of my official term I maintained a correspondence with the creditors of the State.

35 Q. Did any of the New York holders of State bonds come in person and visit you or the Legisla-

61 ture of Tennessee at Nashville in the fall or winter of 1877? If so name some of them and state if you know what was their business in Nashville at such time; state also if you know whether they personally urged legislation looking to a settlement of all the bonded debt of the State?

A. There were several holders or representatives of holders of Tennessee bonds present at Nashville in December, 1877, during the sessions of the Legislature mentioned in my answer to last interrogatory;
62 I do not remember the names of any of them except that of Mr. P. Geddes; they were here to aid as far as they could in effecting a settlement of the State debt.

36 Q. Do you mean by "P. Geddes," Peter Geddes, of New York, member of the "Committee of Tennessee Bondholders," and member of the firm of Geddes & Smith? And if so, was he in conference with you at said time? State also whether he was or not fully advised on the condition of the bonded
63 debt of the State, and particularly whether he knew of the proposed settlement of the Internal Improvement Debt of the Mississippi Central Railroad to the State, if you know?

A. In referring to P. Geddes in answer to last interrogatory, I allude to Peter Geddes, of the firm of Geddes & Smith, of New York City; he was in daily conference with me at the time of his visit; he was well informed in all matters relating to the State debt, and I conferred with him with perfect frank-
64 ness; he was fully advised of the proposed settlement of the debt of the Mississippi Central Railroad—indeed the first intimation I had of a purpose to discharge this debt within a certain fixed time came from Mr. Geddes in a letter from him to the Comptroller of the Treasury which was submitted to me.

37 Q. Are the letters and telegrams from holders of Tennessee bonds incorporated with your messages

of December 5th, and December 12th, 1877, true 65
copies of such letters and telegrams?

A. They are.

38 Q. Please state whether the letters signed by Mr. Geddes and dated August 1st, 1877, August 23d, 1877, August 27th, 1877, and August 29th, 1877, addressed to James L. Gaines, or James L. Gaines, comptroller, were ever seen by you? If so, when and under what circumstances. Please also file a true copy of each of said letters, as part of your deposition? 66

A. The letters named in the interrogatory from Mr. Geddes were received in due time by mail, and immediately submitted to me; the several answers to them were written at my request, and first submitted to me for approval; true copies of said letters are filed herewith as "Exhibits No. 5, 6, 7, 8, J. D. P."

39 Q. In the letter of August 27, 1877, Mr. Geddes refers to an interview which he had just had with Mr. Osborn. What Mr. Osborn did you understand 67
he referred to in said letter, and what connection, if any, did he have with the purchasers of the Mississipi Central Railroad?

A. I understood him to refer to W. H. Osborn, president of defendant, the Chicago, St. Louis & New Orleans Railroad.

40 Q. In the letter of Geddes and Smith and E. D. Morgan & Co., of February 23d, 1877, addressed to you as Governor, it was suggested that the debtors of the State be required in "a reasonable time, say 68
by or before July 1st, 1877, to pay off every obligation due from them to the State as they may now do," etc. What debtors and obligations does this refer to? Please make a true copy of said letter a part of this your deposition.

A. The reference was to the railroads to which bonds for their construction or equipment had been

69 loaned; I file a copy of the said letter, marked "Exhibit 9, J. D. P."

41 Q. In Peter Geddes' letter of August 27th, 1877, aforesaid, he refers to the paying off the lien of Tennessee on the Mississippi Central Railroad, and states that there was little doubt that the last of Tennessee's advances to railroads would be paid off that fall, and that it was quite well understood in New York, "thus freeing her, and her creditors too, for that matter, from a very troublesome disorder."

70 Please state whether from your interviews and correspondence with holders of Tennessee bonds they intimated any objection to railroads paying off the State's lien on account of Internal Improvement aid, or whether they favored it?

A. No objection was ever made by the holders of Tennessee bonds to the settlements made by the State with the railroads; on the contrary, my understanding derived from my correspondence with them

71 was that they agreed with me in the importance of a settlement with all the roads at the earliest day.

42 Q. Did the complainant, Calvin Amory Stevens, have any correspondence with you? If so, please file copies of such letters, circulars, etc., as he sent you in February 1, 1877, January, 1878, and December, 1877, at the time the special sessions of the Legislature were in session. Please file the original circulars, if any, and the envelopes in which such were enclosed, and make such letters and circulars Exhibits to this your deposition?

72 A. The first communication from complainant is dated February 15, 1877, and is "Exhibit 2" to this deposition; the next is incorporated in "Exhibit 4" of this deposition, and is dated December 11th, 1877; the next two are dated December 15th, one a letter, the other a telegram; they are here filed as "Exhibits 10 and 11, J. D. P"; the next is a circular, dated July 19, 1878; I mark said circular with the en-

velope in which it was received as "Exhibit 12, J. D. P"; the next is a letter of January 25th, 1878, marked "Exhibit 13, J. D. P," enclosing certain newspaper clippings with headings in complainant's handwriting, which are here filed as part of the last-named exhibit. 73

43 Q. Did you acknowledge receipt by letter of complainant's letters of January 24th and 25th, 1878, if so, file a copy of such letter?

A. I answered said letters; a copy of my answer is here filed as Exhibit 14, J. D. P. 74

44 Q. You refer in Exhibit 14 to a letter of 24th January, 1878, written by complainant to you; please file said letter and also copy of your letter of 19th January, 1878, to Mr. Manning, to which you refer, which you say was furnished complainant.

A. I file copy of letter to Mr. Manning, marked "Exhibit 15, J. D. P.," and copy of letter from Mr. Stevens, marked "Exhibit 20, J. D. P."

45 Q. The complainant in his deposition states that he got two of the bonds sued on from John B. Manning, in fall of 1878; did said Manning have any correspondence with you? if so, please file copies of his letters? 75

A. I had correspondence with John B. Manning; I file three letters from him, marked "Exhibits 16, 17, 18, J. D. P."

46 Q. Did you have correspondence as to the State debt with other holders of her bonds than those mentioned hereinbefore? 76

A. I had correspondence with many other holders of Tennessee bonds; a large number of letters and telegrams from them in relation to the State debt are on file at the State Capitol.

46 Q. After you had appointed a receiver of the Mississippi Central Railroad were there any propositions to settle with the State by any party; if so, state each and what the State did as to them?

77 A. J. B. Alexander was appointed by the United States Courts of Tennessee, Kentucky and Louisiana Receiver of this road embracing the entire line from Cairo, Illinois, to New Orleans; there was a decree entered in the United States Court at Memphis, authorizing him to pay the defaulted interest to the State; he proposed to pay it, and tendered his check for it; I refused to receive the money and continued to operate the road through the State Receiver until the entire debt, principal and interest,
78 was paid.

48 Q. Did you as Governor of Tennessee make any representations to the purchasers of the Mississippi Central Railroad prior to their purchase as to the debt and lien claimed by the State on said road under her Internal Improvement Acts; if so, state them?

A. The purchaser was informed in advance of the purchase that the State had an exclusive lien on the Tennessee part of the road for the payment of the
79 amount of the bonds loaned to the company, and that under our law, the purchaser could be substituted to the rights of the State upon the payment of the debt; I also informed him that the debt would be paid in Tennessee bonds; at the same time the purchaser was notified that I would not surrender the possession of the road until the entire bonded debt was paid; under our Internal Improvement Acts, the stockholders of the company could recover possession of the road from the State by
80 paying the defaulted interest, but this right did not belong to any of the other parties who were demanding the surrender of the road, and I employed this power to coerce the purchaser to pay off the entire debt.

49 Q. Did you as Governor make any suggestion or representation to said purchasers before the pur-

chase of the Mississippi Central Railroad as to sub- 81
stitution of mortgage bonds to the lien of the State? if so, state it.

A. I discussed the question of substitution with the representatives of the purchasers, and stated, pending negotiations for the purchase, that mortgage bonds could be issued by the purchaser and substituted to the lien of the State.

50 Q. Please examine acquittance and assignment here handed you and state whether you, as Governor of Tennessee, and Charles N. Gibbs, as 82
Secretary of State, executed and delivered the same on the day it bears date to the trustees named in the mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, the defendant, on Nov. 8, 1877?

A. The acquittance and assignment mentioned in interrogatory was executed by myself, as governor, and Chas. N. Gibbs, as Secretary of State; at the time it bears date.

51 Q. Please make an Exhibit of said acquitt- 83
ance and receipt to your deposition?

A. I file it herewith marked, "Exhibit 19, J. D. P."

And further deponent sayeth not.

(Signed) JAMES D. PORTER.

STATE OF TENNESSEE, }
County of Henry. }

I, JOHN SWEENY, notary public, do hereby certi- 84
fy that the foregoing deposition of thirty-nine pages was taken by me as stated in the caption, and that each answer of the witness was written by myself, and that said witness, J. D. Porter, made oath before me in due form of law, that said deposition

was true and signed his name thereto in my presence.

In witness whereof, I have hereunto set my hand and notarial seal this the twenty-fifth day of March, 1880.

[SEAL]

JOHN C. SWEENY,
Notary Public.

My fee, one dollar.

JOHN C. SWEENY, *Notary.*

EXHIBIT No. 1.—J. D. P. 89

MESSAGE OF JAS. D. PORTER, GOVERNOR OF TENNESSEE, TO THE FORTIETH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE.

MESSAGE.

Gentlemen of the Senate and House of Representatives:

Assembled in obedience to the laws of Tennessee, 90
to perform the legislative functions of the State Government, you will not, I am confident, be unmindful of their magnitude, or wanting in wisdom or courage for their performance; your action will affect all the great interests of our people, and I promise executive co-operation in all measures you may devise for their relief.

FINANCIAL CONDITION OF THE STATE.

The funded and registered bonds outstanding, 91
amount to $22,812,400; the bonds belonging to East Tennessee University, not required to be registered, amount to $396,000; the fundable bonds and coupons not presented, amount to $1,021,000; the past due interest amounts to $2,088,756; these sums constitute the State debt, and amount to $26,310,156; from this sum is to be deducted $1,671,916, loaned to the Memphis and Charleston Railroad; $1,199,180, loaned to the Mississippi Central Railroad; $316,774, loaned to the Mississippi and Tennessee 92
Railroad; $14,150, due from purchasers of the Tennessee and Pacific Railroad; $51,125, due from purchasers of Knoxville and Charleston Railroad, and $204,000, due from purchasers of the McMinnville and Manchester Railroad, aggregating $3,458,145, all of which will be paid, leaving as the debt to be provided for, $22,852,011, less $95,636.10, interest

93 from solvent railroads due January 1st, 1877. The outstanding warrant account amounts to $129,060.21, and there is in the Treasury the sum of $139,332.19, in cash, with taxes due and uncollected, amounting to $1,570,659.50.

For a statement in detail of the financial condition of the State, reference is made to the comprehensive reports of the Comptroller and Treasurer, which are herewith transmitted. It will be observed that in the two
94 years past a material reduction has been made in the current expenses of the State, and the estimate made by the Comptroller for the next two years shows that a further reduction will be made; these estimates are based upon existing statutes. In considering this subject, the fact must be remembered that the shrinkage in values has reduced the assessment roll in two years $20,425,835, causing a reduction of $81,703.34 per annum in the revenues of the State; this reduction in values is not alarm-
95 ing; the taxable property of the State is now $268,002,485; this is only four millions and a fraction of a half less than it was in 1872; it is nearly sixteen millions more than it was in 1870, and is forty-five millions more than it was in 1869, and fifty millions more than it was in 1868.

The borrowed money account due at my inauguration, the warrant account, the interest on the school fund, and the interest on bonds of the State held by schools and colleges, has been paid from the
96 revenues of the State. In June preceding the maturity of the interest on the bonded debt, due July 1st, 1875, after it had been ascertained that it was impossible to meet it out of the revenue of the State, under my direction the Comptroller of the Treasury undertook to negotiate the loan of a sum sufficient for that purpose; the terms offered to the State were harsh and unreasonable, and the interest

demanded was so exorbitant that it was determined 97
by the executive officers to let the payment go by default, and to rely for the future upon the revenues of the State; since that time no money has been borrowed for any purpose. Default was again made in the payment of the interest due January 1st, 1876, and again for the interest due July 1st, 1876, and again for the interest due January 1st, 1877. When the money for the payment of the interest due July 1st, 1874, and January 1st, 1875, was provided, there were balances amounting to about $60,- 98
000 not presented at the time, and the payment of these balances was deferred until September 15th, 1876; in the preceding month the Comptroller of the Treasury, under my direction, announced the readiness of the State to pay these balances at that time, together with the installment of interest due July 1st, 1875; the Treasurer commenced the payment at the time appointed, and all the coupons of bonds registered to that date that have been presented have been paid. 99

The present rate of taxation will not pay current expenses and meet the interest on the State debt, and the determination on the part of the people is fixed and settled not to increase it. This conclusion results from a want of ability on the part of the taxpayer. The creditors of the State realize the magnitude of our difficulties, and will make such a concession as will make future interest payments easy and certain. Their readiness to adjust the debt is disclosed in the following communica- 100
tion:

"NEW YORK, December —, 1876.

"To His Excellency JAMES D. PORTER,
Governor of Tennessee:

SIR:—The undersigned holders of bonds of the State of Tennessee, believing that the

101 best interests of Tennessee, and of her public creditors, will be served by an early permanent adjustment of the claims of such creditors, on a basis honorable to the State and equitable to them, respectfully ask your Excellency, in the full belief that such a settlement is practicable, to recommend that the Legislature of Tennessee, as early as may be possible at its ensuing session, appoint a commission to come to this city and confer with the holders of bonds of the
102 State of Tennessee, for the purposes mentioned herein.

"We remain your Excellency's most ob'd't servants,

"GEO. SMITH, London, England,
by GEDDES & SMITH, Agents, etc.
"BROWN BROTHERS & Co., Agents.
"DREXEL, MORGAN & Co., Agents.
"E. D. MORGAN & Co.
"WARD, CAMPBELL & Co.
103 "JAMES G. KING'S SONS,
Agents for Holders.
"GEORGE W. STANTON.
"P. GEDDES."

These parties represent several millions of dollars of the bonds of Tennessee, and are gentlemen authorized to speak and act; and I am assured, from my correspondence with other creditors of the State, that this proposition will
104 be generally acceptable. I earnestly recommend the adoption of the suggestion for a conference with the creditors of the State. The proposition comes from the largest holders of Tennessee bonds. It had its origin with them, and the State can enter upon the negotiation with confidence, and without a sacrifice of her good name. It is of the first importance to the State that this vexed

question shall be settled and removed from the pol- 105
itics of the State. It is the one great barrier to present and future prosperity.

Criminal Expenses.

I renew the recommendation made two years ago to the Thirty-ninth General Assembly, for the passage of an Act requiring the several counties to pay their own criminal expenses. The State has paid for this purpose, during the two years past, the sum of $389,585.63, and during the continuance of 106
our present system there can be no material reduction. Tennessee is one of five, out of thirty-eight States of the Union, where criminal prosecutions are made a charge upon the State Treasury; in thirty-three of them the counties where crimes are committed pay all costs, and the result in these thrty-three States is that the local officers are more active and vigilant in preventing extravagant charges, and I am satisfied that where local responsibility is provided, that bills of cost will be subjected to a scru- 107
tiny they cannot now receive; the Comptroller of the Treasury, in auditing these bills of cost, is only required by law to see that the several items are taxed in accordance with the Statute; if they were referred to the County Judge, or Chairman of the County Court, the necessity for their creation would be discussed, and, it is believed, the criminal law will be administered with more economy, and, by bringing the subject directly before the people, they would stimulate greater vigilance on the part of 108
officials, and require the punishment of criminals to be made with promptness. In cases where rewards are offered by the Governor for the capture of escaped criminals from the County Jails, if the counties were required to pay the reward, it would secure the construction of safe prisons, and more watchfulness on the part of the keepers.

109 THE INFERIOR COURTS.

There are thirty-six Judges of the Inferior Courts of Tennessee. In the neighboring State of Kentucky, with a population greater than our own, with the same character of people, there are twenty-four; compared with the other adjoining States, the inequality is against us in a greater degree. Something is doubtless due to the errors of our system, still it is clear that the inferior courts of the State are too numerous for the amount of business now
110 on their dockets. During the past year I caused circular letters to be addressed to the clerks of these courts, for the purpose of ascertaining the number of causes tried within twelve months, with the number and character of those docketed and undisposed of; about one-third of the clerks responded to these inquiries, and facts sufficiently numerous were elicited to show that a number of courts can be abolished without detriment to the public service.

The statements made by the clerks will be placed
111 before you.

COST OF LITIGATION.

Citizens of the State complain that the cost of litigation is so considerable, that they are in many cases deterred from asserting their rights in the courts of the State; the complaint is a well-founded one, and I know of no more acceptable service to the public than the correction of this evil; costs paid by litigants in the courts of Tennessee are fifty
112 per cent. in excess of the costs paid by citizens of several of the adjoining States for the same service, and are unreasonable and excessive, and ought to be reduced.

FEES AND PERQUISITES.

I renew the following recommendation made in my message to the 39th General Assembly: "Much

complaint is made by the taxpayers of the State at 113
the amount of fees and perquisites received by many officeholders in Tennessee. The compensation of all public servants should be reasonable, but no place should have attached to it such an income as will justify the employment of corrupt means in obtaining it, and I recommend the passage of a general law, limiting the incomes of all officials to a certain amount, and providing that all fees in excess of the prescribed limit shall be paid into the public treasury. 114

ARBITRATION COMMISSION.

Hon. S. W. Cochran, of Obion County, L. D. McKissick, Esq., of Shelby County, and Howell E. Jackson, Esq., of Madison County, were appointed and commissioned as a Special Commission, under the Act approved 18th February, 1875. In spite of the industry of the Judges of the Supreme Court, and the valuable labors of the Courts of Arbitration for Middle and West Tennessee, the business of the 115
Supreme Court continues to accumulate; under our present system of practice it is uncertain when the docket of this Court can be heard. The number of causes already filed at Nashville would occupy the Court for a year. It is needless to remind you of the fact that this state of things is the reasonable cause of much complaint, and that relief is demanded and expected by the country, not by another resort to temporary and expensive expedients, but by such a change of practice as will secure the citizen 116
against a recurrence of the present state of the docket. The transcript of the records of causes appealed to the Supreme Court are made voluminous by the incorporation of all records and the statement of all facts, material or otherwise, used in the Court below; the result is, that the larger part of the time of the Supreme Court is occupied in read-

117 ing and hearing a discussion of issues not pertinent, when if appellants were required by law to assign reasons for the appeal, by making a simple assignment of errors, the Court would always be advised of the issue involved in the litigation, and would be able to dispatch double the amount of business, and at an immense saving to the taxpayers; the adoption of this suggestion and the re-enactment of the Statute annexing a penalty by way of damages to appeals from judgments for money, will discourage
118 appeals that are not meritorious.

Legislative Expenses.

Modern legislation has quadrupled the pay of the principal Clerks of the two Houses of the General Assembly for preparing the indexes for the journals and for copying and preparing the same for the printer, without a reason for this increased expenditure. The old standard of compensation was a
119 liberal one, and I recommend a return to it.

Schools for the Blind and Deaf and Dumb.

The annual appropriation of five thousand dollars to each of these schools is no longer necessary; the per capita allowance of two hundred dollars per annum to the pupils of the State, is ample for the support of these schools.

Immigration.

120 I submit the report of the Commissioner of Immigration. The resources and advantages offered by Tennessee to the immigrant and to the capitalist have been generally and very intelligently advertised during the past two years, resulting in the investment of a large amount of money in our State; many immigrants have been induced to come to the State; they are generally people of substance, who

have been attracted by its fertile soil and genial 121
climate. The people have co-operated with the State officials in encouraging immigration, and their own peaceful and hospitable disposition has furnished the argument and the inducement to come to Tennessee.

I recommend the repeal of the act appropriating two thousand dollars to the Bureau of Immigration, and the passage of an act requiring the Commissioner of Agriculture, Statistics and Mines to perform the duties of Commissioner of Immigration, 122
without additional compensation.

Appropriations.

I renew the following recommendation made to your predecessors: "Comptroller Burch, in his report to my predecessor, calls attention to the requirements of the Constitution, that money shall only be drawn from the treasury in consequence of appropriations made by law: *Constitution, Art.* 2, *Sec.* 24; and also to the requirements of the Code, 123
that the Comptroller shall, at stated times, report 'the unexpended balances of the several appropriations.' Notwithstanding this provision in the Constitution, with a legislative construction clearly indicated in the Code, it is believed that specific appropriations are the exception, and that for many years the public moneys have been expended without the authority contemplated by the Constitution. If that instrument is regarded and estimates required from the executive offices, the Legislature 124
is enabled to see what amounts may be necessary, and can place a check upon expenditures by prescribing a limit beyond which they shall not not go. The mere fact that an appropriation is to be made requires investigation of the amount necessary to be set apart for the purpose, and promotes inquiry into former as well as present expenditures,

while the system now practiced does nothing to insure a faithful performance of this important duty. Under the present system the Comptroller complains of the extent of the discretion practically left to him. He is to examine and adjust all accounts and claims against the State which are by law to be paid out of the Treasury: Code, 207, s. s. 1. With a proper system, nothing could be the subject of a warrant but such as had been included in some appropriation made by law." The Supreme Court has declared "that an indebtedness of the State, fixed and recognized by law, was payable out of the Treasury without a specific appropriation."

Still, it is the duty of the General Assembly to make specific appropriations for the various purposes of the State, and relieve the Comptroller of the Treasury of the discretion now necessarily exercised by him.

Conventional Interest.

I recommend the repeal of the law authorizing a conventional rate of interest as high as ten per cent.; the law has failed to meet a single promise of its friends, and its repeal is very generally demanded by the people of the State.

The Penitentiary.

The Act of the Legislature, approved March 22, 1875, provided for a lease of the State prison and labor of the convicts for a period of five years, if the highest bid offered was "satisfactory to the Governor and Inspectors." Notice of the proposed lease was duly made, and proposals invited. Only three bids were made; these were pronounced unsatisfactory, and the whole subject remitted to the General Assembly. I transmit the report of the Governor and Inspectors, with a detailed statement of their action. Subsequently I extended the lease

with the present lessees for the period of eight 129
months, for a rental of ten thousand one hundred and eighty-one dollars and seventy-five cents ($10,181.75) quarterly for eight hundred (800) convicts, and for any larger number the rent shall be proportionally increased. Said lease can be vacated by either of the contracting parties, at any time, on giving thirty days' notice in writing. A copy of the lease is herewith transmitted.

The present system of employing convict labor is wrong; but I am not certain that the general senti- 130
ment of the people of Tennessee is not in favor of it. The taxpayers have been so heavily burdened in the past with taxes levied to support this institution, that there is danger that they will acquiesce in any policy, however mistaken or mischievous it may be, that secures them from taxation. If it is determined to lease the labor of the convicts, no authority should be given to the lessees to employ the convicts outside of the prison, unless it is done where secure prisons can be provided, or upon the 131
islands of the Mississippi river, where escapes are almost impossible. It has been suggested that the State should employ the labor of the convicts in building or repairing public roads.

The State owes it to her citizens to employ this labor so as to avoid competition with the mechanics of the State; but it would be impossible to use it in the construction of roads without taxing the people heavily for their support, and for the support of a strong force as guards. Under the late lease the 132
lessees were authorized to sub-let the labor of the convicts to farmers and railroad contractors, and the result shows that a large number of them have escaped in the face of the utmost watchfulness. I can suggest no plan for the employment of this labor that is not subject to objection; but, under existing circumstances, I do not see how another

lease of the prison can be avoided. If it is done, the employment of convicts outside the prison should be restricted to the iron and coal mines; and if the lessees are required to employ all the able-bodied convicts, whose punishment will allow them to be worked outside of the prison walls, in the mines, this would embrace a large per cent. of the labor, and will almost destroy anything like competition with the mechanical labor of the State. This plan will meet with the earnest opposition of about three hundred respectable miners now engaged in mining coal; but so long as the Penitentiary system is maintained, the convicts must be employed at some manual labor, and this will bring them in competition with the fewest number, and will be productive of the good result of cheapening the price of coal and iron ore, and of stimulating the development of our manufacturing interests. The lessees should be required to receive the convict at his place of conviction. The State has paid during the past two years, for bringing convicts to the State prison, $25,005.73. The lessees move convicts from point to point at a rate more than fifty per cent. less than is paid by the State.

The lessees now pay a reward of $25 (twenty-five dollars) for the capture of escaped convicts. It will cause more care and watchfulness on their part hereafter, if they are required to offer such reward as the superintendent of the prison may decide is necessary, and be compelled to make publication of it whenever he decides that is is important.

INSPECTORS OF THE PENITENTIARY.

No necessity now exists for this office. The duties once required of them can be performed by the superintendent without an increase of compensation.

137 On the 8th of May, 1876, the Railroad Commissioners sold the Tennessee and Pacific Railroad at public outcry, to the highest bidder, to satisfy an unpaid balance due to the State, amounting to $150,000, with interest from July 1, 1870. The company became the purchaser, and has paid, through the counties of Davidson and Wilson, the sum of $178,000 in the bonds of the State, leaving a balance of $3,500 in bonds and $10,650 in cash unpaid, for the payment of which no provision has yet been 138 made.

The Knoxville and Charleston Railroad was sold by the Commissioners to Messrs. O'Conor & Co. at the price of $75,000—one-fourth in cash, and the balance in one, two and three years. One-half of the purchase money has been paid in the bonds of the State, and with the bonds received from the counties of Davidson and Wilson, have been cancelled, and are on file in the office of Comptroller of the Treasury. 139

The Mississippi Central Railroad failed to pay the semi-annual interest due on 1st July, 1875, and 1st January, 1876, on the bonds loaned by the State. On the 25th day of February, 1876, I appointed R. P. Neeley, of the County of Hardeman, Receiver, and, under my directions, he took immediate possession of the road, and has been operating it in the interest of the State. Since this road has been in the hands of a Receiver it has been kept in good repair, its running expenses paid, and the sum of 140 $60,000 paid into the Treasury of the State on account of taxes and interest. This management on the part of General Neeley occurred at a time of great business prostration, and is much to his honor and credit. Negotiations are now pending, by which the past due interest and sinking fund due from this company, and possibly the principal not yet due, will be paid at an early day.

141 MEMPHIS AND LITTLE ROCK RAILROAD.

I invite attention to the following statement of facts made by my immediate predecessor in his message to the Thirty-ninth General Assembly. It discloses the reason why I have not taken action under Resolution number 72, adopted by the same legislature, instructing the governor to institute suit for the enforcement of a claim of the State against this company:

142 "The act of the 21st of February, 1856, extending aid to the Little Rock Railroad Company authorizes the governor of the State to endorse 350 bonds of the City of Memphis, for one thousand dollars each, to be paid to the Memphis & Little Rock Railroad Company, *provided* the said Memphis & Little Rock Railroad Company should first endorse each of said bonds, guaranteeing payment of principal and interest of the same, and *provided further*, that the City of Memphis shall first, by its proper
143 authorities, execute a mortgage, giving to the State of Tennessee a priority of lien on the stock and interest of said city in said railroad company; and *provided further*, that said railroad company shall give to the State of Tennessee a prior lien upon the whole of the iron and equipments upon the first division of said road, extending from Memphis to the Saint Francis River in Arkansas, &c. Section 12 of said act provides further, 'That the said city bonds shall not be so endorsed until the proper au-
144 thorities of the City of Memphis shall provide and set apart a fund known as a sinking fund; out of which shall be paid, over and above the six per cent. interest, two per cent. per annum on the said bonds, commencing five years from that date.'

"These bonds were issued, and in 1856 and 1857 endorsed by the Governor of the State. After a careful examination of the archives of the State, I

have been unable to find any mortgage upon the 145
stock of the city of Memphis in said road, or upon the iron and equipments of the first division of said road. I have caused search to be made also in the Register's office at Memphis, and in the proper offices in the State of Arkansas, for some registration of such mortgages, but without avail, and I can find no evidence that such mortgages have, in fact, been made. The execution of these mortgages, and providing a sinking fund, were conditions precedent to the right and power of the Gov- 146
ernor to endorse said bonds, and the liability of the State did not attach in the absence of a compliance with such conditions."

I am satisfied the mortgages referred to by Governor Brown were never executed, and that the State has no lien, as is assumed in Resolution 72.

Holders of these bonds endorsed by the State have demanded payment of the past-due interest, and, without any legislative declaration on the sub- 147
ject, I have not hesitated to say the State was in nowise responsible for its payment, or for the payment of the bonds at maturity.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

I commend to your earnest consideration the report of this officer, herewith transmitted, and to his more elaborate report of a year ago, copies of which will be furnished to you. The present incumbent has been zealous and untiring in his efforts to ad- 148
vance the cause of education, to popularize the *common school*, and to teach the public that it is to that agency we must look at last for the diffusion of that noble lesson of our own State Constitution, "that knowledge, learning and virtue are essential to the preservation of republican institutions."

The reports of the Secretary of State, the Libra-

149 rian, and Superintendent of the Capitol, are transmitted for your information.

State Normal College.

Under the Act of March 23d, 1875, I appointed J. B. Lindsley, Edwin H. Ewing, Samuel Watson, R. W. Mitchell, L. G. Tarbox, and John J. Reese, as the State Board of Education. Recently J. W. Hoyte and Leon. Trousdale were appointed members of the Board *vice* Samuel Watson, deceased,
150 and L. G. Tarbox, resigned.

The Board of Trustees of the University of Nashville gave to the State Board the use of its buildings, and the school was located at Nashville.

The Board of Trust of the Peabody Education Fund donated to the school for the first scholastic year the sum of $6,000, and $9,000 for the present year. The school is now in successful operation under Dr. Eben S. Stearns, as president, with a corps of competent teachers, and is a first-class in-
151 stitution for the education of teachers. It has not been a charge upon the treasury or upon the people of the State, and furnishes gratuitous instruction to all comers. The institution is supported by the Peabody Board of Trust. This support will be withdrawn at the close of the present scholastic year, and I earnestly appeal to the General Assembly to provide the means necessary for its maintenance, not by a new levy of taxes, but by the appropriation of $10,000 of the school fund not pro-
152 vided by law. The withdrawal of that amount will add materially to the efficiency of the public school system, and will maintain an institution full of promising results to the educational interests of Tennessee. The great defect of our school system is the want of competent teachers. This school will supply this want, and furnish them from our own people.

For the history of the operations of this school I refer to the report of the State Board of Education, made to the Superintendent of Public Instruction. 153

BUREAU OF AGRICULTURE, STATISTICS AND MINES.

In transmitting the report of the Commissioner of this Bureau, I adopt the following article, taken from the editorial columns of the leading mining and manufacturing journal of this continent, *The Iron Age*, published in the city of New York: 154

"THE TENNESSEE BUREAU OF MINES.

"Of late years the attention of ironmasters, both at home and abroad, has been constantly directed to the South, and especially to Tennessee. Probably at this time there is more inquiry as to its mineral resources, from foreign capitalists, than concerning those of all the rest of the Southern States. A million dollars of British capital have already been invested within the past two years, and 155 there is a strong probability that this is but the foretaste of other millions. For this result the State is indebted to its wonderful resources, but also in a large degree to Col. J. B. Killebrew, Chief of the Bureau of Agriculture, Statistics and Mines of that State. We acknowledge our great indebtedness to him personally, and to his various publications for information which we have uniformly found trustworthy. During the two years this bureau has been in existence 4,000 copies of the 156 Resources of Tennessee, a book of 1,200 pages, have been distributed, besides 8,000 abridgements. Prof. Huxley, speaking of the work and its author, said: 'I am indebted to this most admirable work, of which a copy was presented to me yesterday, a report of the Resources of Tennessee, which, in my judgment, does infinite credit to the State that paid

157 for it and the person who put it together, which I do not profess to have read since yesterday, yet out of which I have contrived to pick the sort of information I want of the structure of the region where we now stand.'

"We have heard it whispered that some persons in Tennessee have suggested the abolition of this Bureau. Such a course would be most short-sighted, and occasion the highest injury to the State. Tennessee needs capital from abroad, and this
158 Bureau has brought it. Col. Killebrew is wise enough to see that it is not alone in the development of its mineral resources that wealth is to be found, but in the agricultural as well, and his effort has been to bring in capital to this end. No State can, at the present day, afford to dispense with such agencies, because capitalists look for information from official sources, and not from parties who wish to sell, and we speak from personal knowledge and examination when we say that the publications of
159 Col. Killebrew are among the fairest statements of the resources of a State we have ever seen. Governor Porter, in his canvas of the State, said: 'Our resources have been advertised all over this continent, and in many parts of the old world. Any man who has been looking for a farm, for a water-power, for a mine of coal, iron or copper, has had his demand for information supplied from this Bureau; and I state it as a fact, the climate, soil and productions of the State of Tennessee have been
160 more generally and intelligently advertised than those of all the States of the South combined.'

"It would be a source of the greatest regret to those who know its value, if the Bureau were to be discontinued.

"So competent and conscientious a public officer cannot be spared until the great work he has undertaken, and thus far successfully performed, is fairly

completed. If every Southern State had placed the 161
work of acquainting the public with its resources in equally competent hands, immigration would have been less difficult to obtain, and capital more disposed than now to seek investment there."

BUREAU OF INSURANCE.

State supervision of the business of insurance is necessary for the security of the citizen and for the protection of solvent companies; this supervision 162
is now exercised by the State Treasurer, who is *ex officio* Commissioner of Insurance. The duties of Treasurer demand the undivided time and attention of that official; his duties as Commissioner of Insurance are necessarily secondary to that, and he cannot give to the business of insurance the attention it deserves. The law requires that he shall, under certain circumstances, visit and examine any insurance company in the State; he cannot do this without neglecting the more important duties of the 163
Treasurer's office.

I recommend that the office of Commissioner of Insurance be made separate and independent; the fees now authorized by law will be ample compensation for the services of a commissioner. I transmit the report of the Commissioner of Insurance, and commend his recommendations to your consideration.

UNITED STATES SURVEY OF TENNESSEE.

164

It affords me pleasure to announce that principally through the representations of Dr. J. M. Safford, State Geologist, the Superintendent of the United States Coast Survey, concluded, during the year just closed, to inaugurate, and is now actually carrying on, a geodetic or correct surface survey of Tennessee. This is in accordance with an act of Congress,

providing that in States in which geological surveys are in progress, the United States Coast Survey may institute geodetic work for the benefit of such geological surveys. The surface survey thus inaugurated within our borders is one of primary importance. Its results cannot fail to be of great service, and that too, without cost to the State. Tennessee is deplorably deficient in the matter of correct maps. There is no map of the State worthy of the name, nor can there be until such data are at hand as will be supplied by the operations of the Coast Survey. Good maps are needed, not only to meet the wants of geological delineation, but for educational, commercial, political, and numerous other purposes. Such we are now in a fair way to have. The Coast Survey will, doubtless, within a reasonable time, supply a complete outline map of the State, based on accurate instrumental observation and trigonometrical calculations. This work in Tennessee is under the general direction of Dr. Safford, as State Geologist, and is executed by Prof. A. H. Buchanan, of Wilson County, who holds his place under the Superintendent of the Coast Survey, to whom he reports, and from whom he receives all instructions as to the details of the work. It is thus in the hands of well-informed and able gentlemen. Out of the yearly appropriation made by Congress for the benefit of the Coast Survey, $2,000 were set apart for the work in Tennessee. The survey was commenced last summer, Dr. Safford selecting the part of the State lying between Nashville and Knoxville, as the initial region. Considering the shortness of the time a large amount of very satisfactory work has been done. The country designated has been reconnoitred and provisionally mapped; suitable points have been selected for stations, and a base line located. The latter runs over ground in the vicinity of Lebanon,

and will be measured during the summer. Recon- 169
noitering has been commenced west of Nashville, and will be extended to the Mississippi river so soon as practicable. For further information in regard to this work I refer you to the report of the State Geologist, to be made to you at an early day. To facilitate the survey so auspiciously commenced, I recommend the passage of an act authorizing the surveyors to run the necessary lines upon lands within the State, to adjust damages, if such should occur, and for the protection of signals, marks, 180
monuments, and other property pertaining to the Coast Survey.

Protection of Signal Lights on the Mississippi River.

The Federal Government has established a number of signal lights, and other aids to navigation on the banks of the Mississippi river, in the State of Tennessee; at certain points malicious persons have interfered with these aids to navigation; lanterns 171
have been broken and lights extinguished, thus endangering steamers and other vessels navigating the river. This is a subject of public concern, and I recommend the passage of an act protecting these aids to navigation, with a provision for the punishment of persons injuring or destroying them.

State Board of Health.

The necessity for the creation of a State Board of Health is commended to your attention. In the 172
twelve States where such a board is provided, very much has been accomplished by arousing the public to a sense of the necessity for the adoption of sanitary measures in order to prevent the operation of causes productive of disease.

Since the completion of our railroad system a large per cent. of the population of the State is in

direct and daily communication with some one of the great centres of population, and citizens of the agricultural districts are as subject to epidemical diseases as the inhabitants of the cities and towns, and have a common interest in the adoption of preventive measures.

If, by the adoption of this reform, disease can be mitigated or prevented, or the life of a single citizen saved, to that extent it will be a contribution to the wealth of the State.

The Militia.

At the request of the Secretary of War the Adjutant General of the State recently made to that officer a report of the military strength of Tennessee; this report shows that we have within the military age 239,764 men; that we have no complete or efficient military organization except a few volunteer companies.

I submit to the General Assembly the propriety of giving force and effect to our Declaration of Rights "that the sure and certain defense of a free people is a well regulated militia."

Inspectors of Illuminating Oils and Fluids.

The act creating this office has been productive of much good to the people of the State in protecting them from the use and purchase of spurious and dangerous burning fluids. The fee now allowed the inspectors should be increased, that allowed under the existing act is so inadequate that in the small towns inspectors cannot afford to provide themselves with the necessary instruments for the testing and guaging, or weighing the fluids, and the result is there are now only seven inspectors on duty in the State.

I transmit the report of the inspectors at Nashville, Memphis, Jackson, Brownsville and Chattanooga.

CENTENNIAL EXPOSITION AT PHILADELPHIA. 177

I transmit the report of Gen. J. T. Wilder, Commissioner from Tennessee; his services have been of great value to the State, and should receive suitable recognition from the General Assembly.

I also transmit the biennial report of the Trustees of East Tennessee University concerning the State College, with the report of the Treasurer of that institution.

HOSPITAL FOR THE INSANE. 178

The act of 23d March, 1875, directed the Governor, Comptroller, and Treasurer of the State to sell the "land purchased by the State for the location of Hospitals for the Insane in the Eastern and Western divisions of the State," "provided said lands shall not be sold for less than three-fourths of its original cost." No lands were bought in the Western division; in the Eastern division a tract was purchased, and is now the property of the State. 179 This tract of land should be sold, and the terms should be left to the discretion of the officers mentioned in the act referred to; under section 3 of the same act, I appointed James S. Boyd and J. M. Carter, of Knox County, to act in conjunction with the Attorney-General to make settlements with all "persons to whom the State is indebted on account "of said Hospital for the Insane;" their report is on file in the office of the Comptroller of the Treasury. 180

THE NAVIGATION OF THE TENNESSEE RIVER.

In pursuance of Senate Joint Resolution, No. 64, I have appointed a Board of Commissioners to consider plans by which the passage of railroad bridges can be made in safety by boats navigating this river.

The Commissioners have made no report.

181 GEOGRAPHICAL CONGRESS AND SYNDICATE OF TRADES.

In pursuance of Resolution No. 52, adopted by the 39th General Assembly, I appointed Commissioners to the Geographical Congress and Syndicate of Trades, held at Paris, France, in August, 1875. Four of the Commissioners, Messrs. Bronson Bayless, Albert Akers, Nathan Adams, and Volney S. Stephenson, were in attendance, and through
182 their agency a diploma was awarded to the State of Tennessee.

The Commissioners have as yet made no official report.

A. O. P. NICHOLSON,

Chief Justice of the Supreme Court of Tennessee, died the 23d day of March, 1876. Few citizens of Tennessee have been honored like this distinguished man; member of the General Assembly, Chan-
183 cellor, President of the Bank of Tennessee, delegate to the Constitutional Convention, Judge of the Supreme Court, Senator in Congress, and to his greater honor and credit it can be said, that in the performance of all the high trusts committed to him by his fellow citizens, he never deviated from the line of principle and integrity.

The General Assembly will respond to the sentiment of the people of Tennessee by giving expression to their feeling of sorrow at the death of this
184 eminent man, and that of his illustrious compeer,

ANDREW JOHNSON.

On the 31st day of July, 1875, Senator Andrew Johnson, the seventeenth President of the United States, departed this life. The death of this illustrious private citizen and eminent public officer, brought deep sorrow upon the public heart, and the

general bereavement has become the more bitter by 185
subsequent political development, threatening alike to freedom and our free institutions, in which, had he lived, he would have acted a conspicuous part in behalf of the people whose cause he made his own. The life of the deceased is full of encouragement, illustrating that neither humble origin, poverty, or want of sound influences in early life, present insuperable barriers to the triumph of an indomitable will and free spirit.

The life of this distinguished man must pass into 186
our country's history, and while it is open to the criticism of opponents and the admiration of friends, all admit that it would be impossible to draw a circle of a great man and wholly exclude therefrom Andrew Johnson.

His hopes in the future of our country were based upon the following sentiment, uttered to a friend, as he was leaving his home for the last time: "Our country supplies its own saving power in the honesty and patriotism of its people." May the peo- 187
ple be equal to the present troubles!

As Chief Executive I attended his funeral, and tendered to his family a spot upon Capitol Hill as his last resting place.

The death of Senator Johnson created a vacancy in our representation in the Senate of the United States, and I commissioned Hon. D. M. Key, of the county of Hamilton, to fill the same *ad interim*.

Federal Interference with State Governments. 188

The representatives of the people of Tennessee cannot disregard the recent action of the Federal authorities in certain States of the South—notably in Florida, Louisiana, South Carolina, and Virginia; in three of them towns and districts have been gar-

risoned with troops of the United States at a time of profound peace, without any proper demand being made for assistance by the local authorities, and the State House of South Carolina was subjected to an armed occupation by Federal troops. The army was made the arbiter of a disputed election, and has been prostituted to the base purpose of organizing a partisan Legislature. The order of a subaltern, excluding the representatives of the people from the State Capitol, was made impudently and without shame, in the interest of judicially declared fraud, and against the judgment of the law as rendered in the highest court.

The representatives of the people of Tennessee should protest against these accumulated outrages with the utmost solemnity and energy.

CONCLUSION.

I earnestly recommend that bills for the appropriation of money be considered at an early day. The pernicious custom of postponing the consideration of a question of the first importance to the country, to the closing hours of the session, encourages hasty and inconsiderate legislation, and the appropriation of money without discussion, to purposes of doubtful propriety.

JAS. D. PORTER.

EXECUTIVE OFFICE,
Nashville, Tenn., Jan. 1, 1877.

EXHIBIT NO. 2.—J. D. P. 193

NEW YORK, Feb. 15th, 1877.

To His Excellency James D. Porter,
Governor of the State of Tennessee:

SIR: On the 26th of December last, we had the honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the representatives of owners of a large amount, and of conveying to you in same an expression of 194 our confidence and belief that a permanent adjustment of the debt on a basis equitable to the holders of it and honorable to the State was practicable, begging that your Excellency would recommend to the Legislature to appoint a commission to come to this city and confer with the creditors of Tennessee, with a view of bringing about such an adjustment.

We have the honor to acknowledge the receipt of communications to us severally addressed by your Excellency, accompanied by a resolution of 195 the Legislature of Tennessee, approved on 27th January, ult., in which the holders of the public debt of the State are invited to submit to the General Assembly, through your Excellency, propositions for an adjustment of said debt, and at the same time to most respectfully express to your Excellency, and through you to the Legislature and people of Tennessee, our great regret and disappointment that the Legislature did not think it expedient to appoint a commission to come to New 196 York, to confer with the creditors of the State for the purpose mentioned, because such a conference we still believe would have developed a plan of adjustment that, while doing equity to the creditors of Tennessee, would, by bringing her revenues and finances into harmonious and easy working order, restore her credit, and again place it firmly

on the high and solid ground it once occupied, offer encouragement to capital to seek employment within her borders in the development of her unsurpassed natural resources, and result in the greatest good to the people of the State generally, enabling them to transmit to posterity, together with the good name which they inherited, a heritage far richer than had come down to them from their fathers.

We have carefully considered the liabilities and resources of Tennessee.

We know that her great wealth of mine, field, and forest are only in the infancy of development.

We know, also, how much the future development of the vast, but now comparatively latent, resources of the State depends upon a restoration of her credit and the re-establishing of her financial system on a sound basis, and knowing, moreover, that the public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit, and by giving her a healthy fiscal system, we beg leave to submit to your Excellency, and through you to the Legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their public debt, and for its ultimate extinguishment in an easy, gradual, and feasible way—a way which, if adopted, we feel very sure we hazard nothing in saying will be productive of the most beneficent results to the people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the State debt, will be the cordial co-operation of both debtor and creditor, and to what extent we propose that the public creditors of Tennessee shall contribute to its success.

We propose: 201

1. That the revenue laws of the State shall be amended so that the collection of taxes may be assured at the time or times when they become due and that at the smallest possible cost to the taxpayer.

2. That the reforms proposed and recommended to the Legislature by your Excellency in regard to the cost of county criminal prosecutions be enacted into a law. 202

3. That the expenses of the State Government be reduced to as low figures as is consistent with the maintenance of its dignity.

4. That the present rate of taxation be maintained, and that the other sources of revenue be not diminished.

5. That the State levy annually a special tax of one mill on the dollar of taxable property, the proceeds of which, in every year, together with any surplus revenue, shall be used in the purchase, cancellation, and destruction of the new issue of bonds which it is proposed herein to issue for existing bonds and past due coupons of July 1st, 1877. 203

6. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of all past-due coupons thereon, and of the coupons which will fall due on July 1st, 1877, into new 204 bonds of the State bearing date July 1st, 1877, and having fifty years to run to maturity, bearing interest for a period of five years from their date at the rate of three (3) per cent. per annum; for a second period of five years thereafter interest at the rate of four (4) per cent. per annum; for a period of five years from the termination of the last men-

205 tioned period interest at the rate of five (5) per cent. per annum; and thereafter, until maturity and payment, interest at the rate of six (6) per cent. per annum. Interest upon each bond to be payable semi-annually on January 1st, and July 1st, in every year from and after its date, and the coupons evidencing it to be receivable by the State for all taxes and dues payable to the State; and bonds to be for $100, $500, and $1,000 each.

The debt of the State, as may be readily ascer-
206 tained, will be within her control and easy power to manage and protect from the start, if, as we sincerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee, in acquiescing in this proposed plan of co-operation between them and the
207 people of Tennessee for restoring the credit of the State, and ultimately extinguishing her public debt, will voluntarily relinquish about $7,000,000 of their claims against Tennessee—an amount equal to about one-third of the entire amount of her public debt.

On the other hand, we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will only produce the very moderate annual
208 sum $268,000 at the present low valuation of property, will, by its silent but sure work, pay off the debt completely, while, by its operation, it will so reduce the amount upon which, under this plan, interest will require to be paid, that at the expiration of each period for an advance in the rate, the reduced amount for which interest will have to be provided, and the certain increase in the value of

property, will together work to make the present 209
rate of taxation quite sufficient to meet all demands upon the State.

During the first fifteen years of the currency of the proposed new issue of bonds we estimate that the proposed special tax for its ultimate payment will pay off between $5,000,000 and $6,000,000 in bonds, allowing twenty per cent. of the tax for its collection and the expenses connected with buying bonds with the proceeds.

When it is considered that this can be accom- 210
plished at so small an annual charge to the people of Tennessee, and that such certain beneficial results to them are sure to follow, we have the greatest confidence that their loyalty to Tennessee, their determination to preserve and perpetuate her honor and good name, will be sufficient to induce them to make the manly effort to that end of unitedly raising a one-mill tax on their property annually.

We are quite well aware of the partial failure of
crops in Tennessee in the years 1873 and 1874, and 211
of the depressed condition of business, and of all industries in the State, but throughout the country their exists the same depression — stagnation.

In full recognition of this depression and stagnation, which there is every reason for believing will soon give place to better times, we have in the plan herein submitted for a rearrangement of the finances of Tennessee, made her obligations within her means and evident ability to meet now. 212

With the existing rate of taxation, and the proposed special tax for the extinguishment of the debt, which together make a five-mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee :

213

	Mills.
In Arkansas the rate is	10
In Mississippi the rate is	$6\frac{1}{2}$
In Alabama the rate is	7
In Georgia the rate is	5
In North Carolina the rate is	$3\frac{3}{10}$
In South Carolina the rate is	12
In Virginia the rate is	5
In Kentucky the rate is	$4\frac{1}{2}$

214 In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to make it possible to avail of the proposed co-operation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of her credit on a plan so favorable as we have herein outlined, and we have the honor to be, your obedient servants,

215 GEORGE SMITH, of London, England,
by GEDDES & SMITH, Agents, &c.
BROWN BROS. & Co., Agents.
DREXEL, MORGAN & Co., Agents.
E. D. MORGAN & Co., Agents and owners.
JAMES G. KING'S SONS,
as agents for bondholders.
WARD CAMPBELL & Co., agents.
G. W. STANTON, JR.
P. GEDDES.

216 We concur in the foregoing:

CALVIN STEVENS,
by C. AMORY STEVENS, Attorney.
J. V. CLARK, President, Chicago,
per THOS. G. ROBINSON.
WM. G. CREAMER, No. 96 John Street.
CHAS. J. HINE, New York.

A. ISELIN & Co., as Attorneys, New York. 217
W. R. JENKINS, New York.
MRS. JOSEPHINE S. NEWCOMB,
by H. POMEROY, No. 54 Broad street.
GEORGE WATSON, Chicago.
per JAS. H. SMITH.
JNO. H. MACY, President.

HENRY E. JOHNSTON,
JOHNSON BANKHEAD & Co., Agents,
THOMAS F. ANDREWS,
M. ABRAMS,
WILLIAM DE GORY,
SAMUEL L. PETERS,
WILSON, COLSTON & Co., Ag'ts,
JOHN S. GITTINGS,
} Baltimore. 218

EXHIBIT No. 3.—J. D. P.

MESSAGE OF GOVERNOR JAS. D. PORTER TO THE FORTIETH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE.—FIRST EXTRA SESSION.—DECEMBER 5, 1877. 219

Gentlemen of the Senate and House of Representatives:

I have convened the General Assembly in extraordinary session for the purpose of considering the following recommendation to adjust the State debt:

"*That after adding the arrears of interest the* 220 *aggregate amount of the State debt should be readjusted by the issue of new bonds at the rate of sixty per cent. of the total amount;* i. e., *for every sum of one thousand dollars, new bonds should be given in exchange and full settlement for six hundred dollars, or for proportionate amounts, the new bonds to carry six per cent., payable semi-*

221 *annually in the City of New York, the principal payable in thirty years, the interest coupons to be received by the State for all taxes.*"

This is the recommendation made by a Committee of Arbiters, appointed at a meeting of citizens held at the Clearing House in New York City in January, 1877. In a special message, I urged the General Assembly to send this committee of conference, and recommended that all questions touching the
222 State debt "be postponed to await the action of the arbiters," and announced that if this policy was adopted, "and if time becomes essential, I will not hesitate to convene the General Assembly in extraordinary session."

On the 19th of March, 1877, the Legislative Committee reported to the General Assembly the result of the conference: seven days thereafter the two Houses adjourned without taking action upon this report. Under the circumstances mentioned I have
223 recognized it as my duty to call you from your homes to consider this recommendation, and to respectfully and earnestly recommend its adoption.

Since the adjournment of the General Assembly, the debts due from the Memphis & Charleston and Mississippi Central Railroads, have been paid; deducting the sum of $299,814, the amount of the debt of the Mississippi & Tennessee Railroad, not due, and for which the State has ample security, the debt of the State on the 1st January, 1878, will
224 amount to $23,212,606; this includes the bonded debt not due, the bonded debt past due, five full instalments of interest, and balances of several instalments not presented, amounting to $40,000. The greater part of this debt was incurred prior to 1861. The following table exhibits the amount issued since the late war between the States, the amount canceled and the amount now outstanding:

225

	Registered and not canceled.	Registered and canceled.	Canceled before registration.	East Tennessee University.	Mineral Home.	Unaccounted for.	Total.
Green, no letter....	2,388	321	7,021	113	120	37	10,000
" " "B"..	646	114	4,283	100	.....	61	5,203
" " "C"..	598	60	1,401	2	.....	139	2,200
White, " "D"..	2,416	429	2,006	37	.....	53	4,941
Grand Total.....	6,047	924	14,741	252	120	290	22,344

226

The first series, Green, no letter, were issued under the Act of 1851-2, and amendments, $9,593,000 issued to railroads and turnpikes, and $407,000 were renewals of bonds past due. The second series, Green "B," were issued under authority of the Act of 1851-2, $290,000 were renewals for past due bonds, the balance issued to railroads and turnpikes. The third series, Green "C," and fourth series, White "D," issued under Acts of 1866 and 1868, were for past due interest, and known as Funding Bonds. This table shows that there are now outstanding $3,033,000 of the bonds popularly known as "Brownlow Bonds."

227

228

The debt is accumulating at the rate of four thousand dollars per day, and if the present condition of affairs continue, it is an easy calculation to determine how soon the debt will gain volume enough to destroy the prosperity of the State and bring discredit upon all of its citizens.

229 THE VALIDITY OF THE DEBT.

No question can now arise as to the validity of the public debt with the exception of the inconsiderable amount issued to Mineral Home Railroad, which has been declared fraudulent; the people of Tennessee through their representatives have in the most formal and solemn manner recognized it by the bonds of any series being declared receivable in payment of the purchase money for delinquent rail-
230 roads. It was again recognized by the funding act of 1873, by which the obligation of the State was renewed to pay interest on the entire debt and the principal at maturity, and the validity of the several series of bonds have been recognized by the 39th and 40th General Assembly by being declared receivable in discharge of debts due to the State, and I assume that no judicial tribunal would now pronounce against the funded and registered bonds.

But the New York arbiters say in the report made
231 to the General Assembly, after full discussion with the Legislative Committee, "when all the circumstances under which the debt was incurred, the peculiar condition of affairs in the State together with its present ability and its future resources," that the compromise recommended by them is "just and fair both to debtor and creditor." The adoption of this recommendation of a tribunal so disinterested and distinguished, without consulting the holders of our bonds, would relieve the State of the sus-
232 picion of unfairness or of the charge of repudiating an acknowledged liability. But such a number of the bondholders have signified their willingness to accept the terms of the adjustment as to satisfy me that if it is made it will be generally acceptable. I transmit the proposition of the bondholders. The terms are liberal to the State, the creditors voluntarily make the suggestion, and it is consistent with

the dignity of the State to accept the abatement. 233
The financial condition of the State is the only barrier to immediate prosperity. Its greatest want is capital and immigration. Both will avoid us unless the public debt is provided for. Men do not buy where the tenure of property is insecure, or where public obligations are disregarded. One of the highest duties of the citizen is the maintenance of the public credit; without it little is left worthy of public preservation.

234

THE ABILITY OF THE STATE.

There is to my mind no question as to the ability of the State to meet the interest on the debt, if adjusted upon the terms offered by its creditors. The present assessed value of the property of the State is $236,000,000, and is an unusually liberal one to the taxpayer. Tennessee contributes to the markets of the world, with her cotton, grain and tobacco, as largely, and is as rich in soil, minerals and productions as any State in the Union. The value of the 235
principal crops raised in Tennessee during the year 1876, amounted to $47,126,310, not less than one-third of which was surplus. The productions of the State of Kentucky for the same period was $2,687,560 less. Tennessee produced seventeen millions more than Virginia, three millions more than Georgia, more than Maryland and South Carolina combined, mor than Alabama and Florida, and seventeen millions more than North Carolina, while the difference in population is in favor of Kenfucky and Georgia, 236
and Maryland and South Carolina combined. The productions of the State for the year 1877, amount to over $52,000,000, with an increased surplus of cotton, wheat and tobacco, and the value of farm products is greater per capita in Tennessee than it is in any of the States named, and greater according to the last census report than it is in the rich

States of New York, Pennsylvania and Missouri. There are other productions of the State, cattle, mules, horses, sheep, bacon, fruit, marble, iron, from which large revenues are derived, with an increasing area and capacity for production.

The bonds of the State were issued for purposes of internal improvement, very many of them were sold above par, and are now held by the original purchasers, by educational and charitable institutions; among the latter class is the Peabody Institute, at Baltimore, Maryland, which has signified through the proper officer a willingness to accept the terms of the proposed adjustment; the greatest American philanthropist, George Peabody, left as part of the endowment to this institution that bears his name, $364,000 in the bonds of the State of Tennessee. Since 1868 the children of Tennessee have received from the Peabody Trust Fund, for their education, the sum of $191,650, and for the year 1878, an appropriation that will make it exceed $200,000. The State of Tennessee cannot, in my opinion, accept this abatement, or that proposed by the holders of bonds issued for the erection of the capitol, those held by educational institutions, by charities, or by persons whose guardians made the investment in pursuance of our statute authorizing the investment of the estate of minors in the bonds of the State.

If the adjustment recommended is adopted I recommend that the new bond shall bear date July the first, 1878, to carry interest from that date; provision for a sinking fund can with propriety be postponed, but in case of a surplus in the Treasury after liquidating the appropriations made by law, it would be well to provide for its investment in the bonds of the State, and in this way inaugurate a system for the gradual extinguishment of the principal of the debt.

THE COLLECTION OF THE REVENUE. 241

The Comptroller of the Treasury, in his biennial report to the General Assembly, states that "it is believed that the compensation allowed Trustees is inadequate to the labor and responsibility of the office, especially in the smaller counties, where there is little or no municipal taxes to be collected," experience has confirmed the wisdom of this recommendation; in one of the Counties of the State there is no Collector, no one being willing to accept the 242
office for the compensation allowed by law; in several others, resignations have been tendered. The revenue cannot be efficiently collected in the smaller counties for an inadequate compensation, and I recommend such an amendment to the statute as will secure this result.

It will be necessary to provide by law for the expenses of this extraordinary session of the General Assembly.

CONCLUSION. 243

The gravity of the question submitted to you will, I doubt not, command your most deliberate consideration; counselling wisdom and calmness in its discussion, I leave it with you in the confident belief that your action will be controlled by your convictions of duty to your constituents.

JAMES D. PORTER.

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DOCUMENTS ACCOMPANYING THE GOVERNOR'S MESSAGE.

Letter from John B. Manning, New York.

NEW YORK, November 1st, 1877.

To His Excellency, JAS. D. PORTER,
Governor of Tennessee:

I am authorized on behalf of a large number of Tennessee bondholders to submit proposition of compromise by accepting sixty cents on the dollar for bonds and past due coupons, payable in new six per cent. consols, and ask you to convene the Legislature to carry out the compromise.

JOHN B. MANNING.

(Represents $2,000,000.)

Letter from A. R. Hall, Huntington, Tenn.

HUNTINGTON, TENN., November 23d, 1877.

Governor JAMES D. PORTER:

Sir—Since writing you yesterday I notice that the terms of my proposition differ somewhat from those contained in your proclamation. In order that not the least obstacle may be thrown in the way of settlement I amwilling to accept the terms put forth in your proclamation.

Very respectfully,

A. R. HALL.

Letter from G. W. Norton & Co., Louisville, Kentucky. 249

LOUISVILLE, KY., October 27th, 187

JAMES L. GAINES, Esq.,
Comptroller,
Nashville, Tenn.:

Dear Sir—Your favor of the 25th instant is received and noted. As stated in ours of 24th instant, the members of this firm have held and owned Ten- 250
nesseeState bonds for more than twenty years, having faith in them as a safe and good investment. The Clearing House Committee, of New York, Geo. S. Coe, Esq., Chairman, recommended an adjustment of the State debt of Tennessee by issuing a new six per cent. bond, with coupons receivable for all taxes and due to the State, to the extent of sixty per cent. of the principal and accrued interest of the present outstanding State bonds, and if the Tennessee Legislature 251
would certainly adopt this plan of adjustment, without any modification whatever, we would be willing to accept it, as far as we are concerned, and, as stated in ours of the 24th inst., we believe it would be generally accepted by the bondholders if promptly offered; but, in our opinion, the bondholders would not accept any less than this. If the Legislature will certainly adopt the Coe recommendation, then we should be pleased to see an early called session of the Legislature. We have no objection 252
to you placing this letter and ours of the 24th inst. in the hands of Governor Porter, as suggested by you.

Truly respectfully,
G. W. NORTON & Co.

253 *Letter from Eugene Kelly, New York.*

NEW YORK, October 19th, 1877.

To His Excellency, JAMES D. PORTER,
Governor of Tennessee:

Sir:—The undersigned owners and representatives of holders of bonds of the State of Tennessee beg to inform you that they are willing to accept new bonds of the State, having thirty years to run, bearing six per cent. interest, payable semi-annually
254 in the City of New York, coupons to be receivable for taxes and all other dues to the State, at the rate of sixty per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States.

The undersigned, therefore, respectfully requests your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain
255 Your obedient servants,

EUGENE KELLY.

(Holds $297,000.)

Letter from G. W. Stanton, Jr., and E. D. Morgan & Co., New York.

NEW YORK, October 19, 1877.

256 To His Excellency, JAMES D. PORTER,
Governor of Tennessee:

Sir:—The undersigned owners and representatives of holders of bonds of the State of Tennessee beg to inform you that they are willing to accept new bonds of the State having thirty years to run, bearing 6 per cent. interest, payable semi-annually in the City of New York, coupons to be receivable

for taxes and all other dues to the State, at the rate 257
of 60 per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration, on the debts of the Southern States, provided the law is passed before the first of February next. The undersigned, therefore, respectfully requests your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain

Your obedient servants. 258

G. W. STANTON, JR.

E. D. MORGAN & CO.

Letter from bondholders of Baltimore.

BALTIMORE, October 19, 1877.

To His Excellency, JAMES D. PORTER,

Governor of Tennessee:

Sir:—The undersigned owners and representatives of holders of bonds of the State of Tennessee, beg to inform you that they are willing to accept new bonds of the State, having thirty years to run, bearing six per cent. interest, payable semi-annually in the City of New York, coupons to be receivable for taxes and all other dues to the State, at the rate of sixty per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States. 259 260

The undersigned, therefore, respectfully request your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain

Your obedient servants,

($444,700.) WILLIAM MCKIM,

President of the Peabody Institute, Baltimore.

261 JOHN BOLGIANO,
SAMUEL L. PETERS,
FRANCIS WHITE,
JOSEPH H. RIEMAN,
A. RIEMAN,
THOS. WILSON,
A. D. O'LEARY,
DANIEL H. SHRIVER,
BENJ. W. BENNETT,
By D. H. Shriver,

262 JOHN CUSHING,
EDW. K. SCHAEFFER,
FRANCIS A. CROOK,
Treasurer of the Baltimore Equitable Society.
FRANCIS A. CROOK.

Letter from E. D. Morgan & Co., New York.

NEW YORK, July 7, 1877.

263 To His Excellency, GOV. JAMES D. PORTER,
Nashville, Tenn.:

Dear Sir:—Your favor of the 29th ult., addressed to Messrs. Geddes & Smith and ourselves has been received, advising that you propose to convene the General Assembly after the new assessment has been completed, in November, for the purpose of adjusting your State debt.

You ask if a settlement upon the basis proposed
264 by the Arbiters in March last will be acceptable to the bondholders, and desire us to confer with them and advise you. We will communicate with you later on, after learning the views of the foreign holders whom we represent, as, also, of some of the larger holders here.

We are told that it is represented in Tennessee that large amounts of your State bonds are held by

parties who bought at late current prices. We be- 265
lieve that very few are so held. Our observation leads us to believe that nearly all the bonds which the necessities or fears of holders have forced to sale of late years have been absorbed by your railroads for settlement with the State. We find them generally held by original investors, who believe that your State will in the end pay them, principal and interest.

Very respectfully,

E. D. MORGAN & Co. 266

EXHIBIT No. 4.—J. D. P.

MESSAGE OF GOVERNOR JAS. D. PORTER TO THE FORTIETH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE.—SECOND EXTRA SESSION—DECEMBER 12, 1877. 267

EXECUTIVE OFFICE,
NASHVILLE, Tenn., December 12, 1877.

Gentlemen of the Senate and House of Representatives:

I have convened the General Assembly in extraordinary session for the purpose of adjusting the State debt. Before final action was taken upon the proposition submitted on the 5th of December, 1877, to the first extra session of the Fortieth Gen- 268
eral Assembly, a number of the creditors of the State, representing several millions of her debt, forwarded the following communication to this office:

NEW YORK, December 11, 1877.

To Gov. JAS. D. PORTER:

I am a large holder of Tennessee bonds, which

have been held for years strictly for investment account. I was a signer of the former petition sent you through the Committee of Arbitration, and while I would prefer to have that proposition accepted, yet if it would require a revenue bill that is deemed by the Legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and do hereby change it. I propose to take fifty cents on the dollar. I think this dispatch represents the sentiment of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the Legislature, through your Excellency, to reciprocate this feeling, and make a settlement without further delay. Please submit this to the Legislature for its action.

THE ESTATE OF CALVIN STEVENS,
C. AMORY STEVENS, *Trustee.*

NEW YORK, December 10, 1877.

To GOV. JAS. D. PORTER:

We hold and represent Tennessee State bonds, which have been held for years as an investment, which we hereby offer to fund into New Tennessee State bonds at fifty cents on the dollar of principal and accepted interest, and we respectfully request you to submit this proposition to the Legislature for its acceptance or rejection.

INMAN SWANN & CO.

LOUISVILLE, December 10, 1877. 273

To Gov. JAS. D. PORTER:

We are willing for the proposition of arbiters to be made fifty cents instead of sixty, rather than the adjustment should fail.

G. W. WHARTON & Co.

NEW YORK, December 10, 1877.

To Gov. JAS. D. PORTER:

Having heard that there is no probability of the 274
sixty per cent. proposition being accepted, we would request you to recommend to the Legislature to pass a law funding the debt of the State at fifty per cent. of the principal and past due coupons, in bonds bearing six per cent. interest. We will accept this for the bonds we represent, and think we can induce a large majority of bondholders to do the same.

A. ISELIN & Co.

275

NEW YORK, December 10, 1877.

To his Excellency, JAS. D. PORTER,

Governor of Tennessee:

On behalf of clients I offer to accept for bonds and interest at fifty per cent. new six per cent. consols, with first coupon payable July, 1878, and if not January, 1879. I beg you to lay this before the Legislature.

JOHN B. MANNING.

NASHVILLE, December 10, 1877. 276

To his Excellency, JAS. D. PORTER:

Dear Sir—The following dispatch has just been received:

NEW YORK, December 10, 1877.

B. F. WILSON, Nashville, Tenn.:

My firm holds bonds for themselves and others,

277 and are willing to fund at fifty on principal and accrued interest into six per cent. bonds, and if you think it best to do so you may hand this proposition to the Governor, to be submitted to the Legislature by him. It will take time to see many of the bondholders, and especially those who hold as investors, but most all of this class, so far as I have seen them, prefer to have the matter settled at fifty rather than have no settlement made.

R. T. WILSON.

278

And in an unofficial way I have been informed that the great body of the creditors have indicated a willingness to accept the same terms.

The creditors of the State understand the temper of our people, both have become the victims of unscrupulous speculators, their influence and counsel has aroused suspicion in the mind of the citizen and
279 a feeling of distrust on the part of the creditor, and the good and great name of Tennessee is in danger of being sacrificed to the avarice and greed of these mere adventurers. The creditors now come forward and offer a concession to meet what they understand to be the views of the represntatives of the people. It is a liberal and generous one, and in my opinion should be accepted without hesitation or delay. We cannot ask for a further abatement, or longer postpone the settlement of a question demanded by
280 every consideration of justice and policy.

I transmit a statement from the Comptroller of the Treasury exhibiting the levy necessary to meet the obligations of the State if the proposition of the creditors is accepted. This statement does not include $70,500 income from the lease of the Penitentiary, not less than $56,000 from present valuation of railroads, together with the revenue to be derived

from the tax on telegraph lines and sleeping cars. 281

If a compromise of the debt is made it will be the duty of the General Assembly to provide the revenue necessary to carry it out. It would also be necessary to provide by appropriate legislation for the expenses of the first and present extra sessions of the General Assembly.

I appeal to the General Assembly to rescue the State from its present peril, and to preserve something of its credit. The people of Tennessee are not prepared to learn the full lesson of repudiation; 282 they are still sensible of the responsibility resting upon them of maintaining the good name impressed upon the State by so many of their sons. The time has been when the prestige of Tennessee, the high standard of her commercial crdit, made all of her sons proud of their nativity. Do not let us turn our backs upon this honorable history.

JAS. D. PORTER.

283

COMPTROLLER'S OFFICE,
NASHVILLE, Tenn., Dec. 12, 1877.

To His Excellency,

JAMES D. PORTER, *Governor*, etc.:

Sir—In reply to your inquiry of this date in regard to estimate as to what tax it may be necessary to levy on the assessed taxable property of the State in order to pay 6 per cent. interest on the State debt adjusted at 50 cents, I have the honor to 284 convey herewith estimate which assumes that current expenses and interest on school fund were provided for at the regular session of this Legislature.

From this statement it will be seen that an additional levy of three mills, or 30 cents on $100, will be sufficient to provide for the interest on the State debt, provided the debt should be adjusted at fifty cents on the dollar:

285 Bonded debt, funded and registered, including accumulated interest to July 1, 1878..... $23,212,666 00
Adjusted at fifty cents..... 11,606,333 00

Interest on $11,606,333 at 6 per cent. 696,379 98

286 Assessed taxable property in the State as per tax aggregate for 1877 (DeKalb County estimated)..... $236,799,580 00

At 30 cents on $100 this tax aggregate will yield. $710,398 74
Deduct 13 per cent. for cost of collection, delinquencies, etc..... 92,351 84

Net..... $618,046 90

287 Add amount derived from tax on merchants, which tax is governed by the tax on property, it being estimated that at 10 cents on $100 the tax on merchants will yield $32,000. Then at 30 cents on $100 it will yield..... 96,000 00

288 Total estimated receipts from tax on property and tax on merchants at 30 cents on $100..... $714,046 90

Respectfully submitted

JAMES L. GAINES,
Comptroller.

EXHIBIT NO. 5—J. D. P. 289

(Private.) NEW YORK, Aug. 1, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville.

Dear Sir:—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so. 290

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned, to assure the people of Tennessee that you were not here to pay off the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am 291
therefore not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which I think might be gotten up, offering to settle at say 75 per cent. of principal and interest in 6 per cent bonds, coupons receivable for all taxes and dues 292
to the State. If any hope were held out that a settlement can be effected at the equivalent of our proposition, say 75c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and I think that with careful handling it could be carried. Of course there are always some who hold back, but I think that the great majority

would take 75 per cent. under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 per cent. I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and the bondholders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally I have worked hard to save the remnant of Tennessee's once good credit, and I make this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

If you think so advisable you may convey to the Governor at your convenience the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours,

P. GEDDES,

P. O. Box 936.

EXHIBIT NO. 6—J. D. P. 297

NEW YORK, Aug. 23, 1877.

JAMES L. GAINES, Esq.,
Comptroller.

Dear Sir:—I duly received your esteemed favor of the 8th current.

Since then I learnthat the Mississippi and Tennessee Railroad Company have voted to pay off their 298
debt to Tennessee. This practically settles up all advances made by the State to railroad companies, and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to do I cannot say. They may or may not adhere to their proposition of last February.

If the people of Tennesseee under any circumstances are liable to do anything disgraceful in regard to their public debt, or permit anything of that kind 299
to be done, of which you seem to entertain fears, should a settlement not be come to this year, and the debt question become one of the issues in the State canvas of next summer, the inquiry forces itself upon the bondholders, of how much value would the reduced debt of such a people be to the holders of it?

This is a very serious question in view of the fears you express, and of what I will now only characterize as the extraordinary legislation of last winter. 300
I shall be happy to hear from you in reply at your convenience.

Mr. Smith has been travelling since the beginning of July, and hence we do not hear from him.

I am,
Very truly yours,
P. GEDDES,
P. O. Box 936.

301 EXHIBIT NO. 7—J. D. P.

(Private.) NEW YORK, August 27, 1877.

HON. JAMES L. GAINES,
Nashville.

My Dear Sir:—I have just had an interview with Mr. Osborne, who reports that in thirty days the parties in whose interest the Mississippi Central
302 was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee on the Miss. Central, and that they now think they can safely pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very
303 troublesome disorder.

Although you do not in your note of the 8th current give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee who must be still in the majority would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

304 The outstanding bonds of Tennessee are mainly held by investors, by trustees and Trust Institutions. The "margins" of speculators in and out of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now, investors, and parties, and institutions holding in trust prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving 305
lower rates of interest and smaller dividends on
their investments than they have been accustomed
to. Many of them, judging by the large subscrip-
tions to government four per cents. recently, have
come apparently to the conclusion that lower rates
of interest than formerly prevailed will hereafter
permanently prevail. This is the mood in which
they now appear to me to be, and it has suggested
the idea that advantage might possibly be taken of
so favorable a time and circumstances by the 306
friends of Tennessee to bring about a compromise
of the rate of interest on her debt which would en-
able her with ease to pay it all off.

I will not discuss her ability to pay her debt, but
will assume it and pass on to my suggestion, which
is as follows:

The State to issue new bonds for the principal
and past due interest of her existing bonds, to bear
interest at 4 (four) per cent. per annum, payable
semi-annually, January 1 and July 1, in each year, 307
coupons to be attached to the bonds representing
each payment of interest, to be receivable by the
State for all taxes and dues to the State, and to be
free from taxation of any kind in the State. The
bonds themselves to be payable fifty or one hundred
years hence, and redeemable by the State at any
time after six month's notice that the State is pre-
pared to pay them.

The bondholders of Tennessee may object to mak-
ing such a proposition of compromise; but if I get 308
from you and the Governor encouragement that if
such a proposition were made by the holders of more
than half the debt, it would be accepted, I will ex-
ert myself with Mr. George Smith and other well
known large holders to make it.

Firmly convinced as I am that a settlement in
full, if by any possibility it can be accomplished,

309 will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

310 If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

Let me hear from you on receipt and write further afterward.

Truly yours,

P. GEDDES.

EXHIBIT NO. 8—J. D. P.

311

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,

Nashville, Tenn.:

My Dear Sir:—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

Seeing by the morning papers that the Governors were to meet yesterday at the Continental Hotel, Philadelphia, I telegraphed to Governor Porter

312 there asking him where a letter would reach him today, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

In case Tennessee wants to pay off her debt it

will be of great advantage to her to arrange for a 313
low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease or at lower cost bought for a sinking fund than can bonds bearing full rates.

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,

P. GEDDES.

314

EXHIBIT NO. 9—J. D. P.

NEW YORK, Feb. 23d, 1877.

His Excellency,
JAMES D. PORTER,
Governor of Tennessee:

SIR: We beg leave to call your attention to the enclosed telegram to the *New York Herald*, from 315
its Nashville correspondent, cut from this morning's issue of the *Herald*, and to confirm our dispatch to you of this morning by telegraph in relation thereto, as follows:

"Proposition from large and influential New
"York and Baltimore bondholders expressed to you
"on Wednesday, and should be received to-day.
"Bondholders here know nothing whatever of a
"meeting or of resolutions reported in *Herald* to- 316
"day as having been sent to you, and by you trans-
"mitted to legislature, with a special message.
"This may be a movement designed to destroy or
"embarrass any proper adjustment."

No meeting of bondholders of Tennessee, so far as we are aware or can ascertain, has either been called

317 or held in this city. Neither have we heard at any time of a purpose to call or hold such a meeting, nor of a purpose or desire on the part of real holders of Tennessee bonds to take any action whatever, outside of what has been taken through and in the communication which we, with others had the honor to address to you under date the 15th current. It could hardly be possible to call or hold a meeting here of Tennessee bondholders without our knowing or hearing about it. Such being the case, we thought it
318 our duty to telegraph to your Excellency as we did this forenoon. It occurred to us that possibly an attempt to mislead your Excellency and the people of Tennessee as to the sentiments and wishes of the real holders of the indebtedness of the State had been made, akin to the attempt made last year to create a false impression, through a letter to the State Treasurer, to which the name of one of the Astors had been forged.

The debtors of the State, with all of which she has
319 been extremely liberal, even to the injury of her own credit many here believe, are supposed to be antagonistic to the consummation of any plan for the restoration of Tennessee credit now, the complete prostration of which, it is supposed, would be for their immediate pecuniary advantage. This view, if entertained by any of the debtors of the State, is unsound. For, with every decline in the credit of the State, their credit inevitably suffers.

But, to remove this cause of a real or apparent
320 antagonism between the debtors and creditors of the State, and also to remove—which is of immediate and great importance—an obstacle which is calculated to prevent or, at least, hinder the people of Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the State, and place it on a solid basis, we would respectfully suggest to your

Excellency that the debtors of the State be required, 321
within a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the State as now they may do, after which time only such advances as were specifically made to each to be receivable in payment or cash; this is to apply to principal and interest.

We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the creditors of the State would regard such a step as one taken in the right direc- 322
tion; and

We remain
Your Excellency's Ob't Serv'ts,
GEDDES & SMITH.
E. D. MORGAN & CO.

The views above given, we beg to add, are for your own personal consideration.

G. & S.

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I, WILLIAM H. DELANCEY, Special Examiner, do hereby certify that an original letter, of which the foregoing is a true and exact copy, was produced before me on the examination of Peter Geddes, a witness produced on the part of the complainants, and was submitted to him and acknowledged by him, as appears in his deposition, to which this is 324
annexed as an exhibit. I further certify that the foregoing copy is a copy of the whole of such original letter.

New York, October 13th, A. D. 1879.

WILLIAM H. DELANCEY,
Special Examiner.

325 EXHIBIT No. 10.—J. D. P.

THE WESTERN UNION TELEGRAPH COMPANY } (51c). *New York, Dec.* 15, 1877. }

Received at 2:49 P. M.

To Gov'r JAMES D. PORTER:

The undersigned do not believe that any compromise measure at less than fifty per cent., bearing six per cent. interest, would be accepted by the
326 bondholders, and that the practical effect of a measure at a less compromise rate, of either principal or interest, would be to leave a great majority of the bonds outstanding, and practically no settlement of the State debt.

A. ISELIN & Co.,
F. H. COSSITT,
by J. G. HOLBROOK, Att'y,
CHAS. M. FRY,
THE GLOBE LIFE INSURANCE Co.,
327 ESTATE OF CALVIN STEVENS,
C. AMORY STEVENS,
88 paid *Trustee.*

EXHIBIT No. 11.—J. D. P.

NEW YORK, Dec. 15, '77.

Gov. JAS. D. PORTER, Nashville, Tenn.

Dear Sir:—I telegraphed you Dec. 11th, and
328 again to-day. I feel it my duty to further say: That while I fully recognize and sympathise with the financial distress of Tenn., yet I cannot entirely disregard my own embarrassment and that of my fellow bondholders.

I represent one of the many estates which purchased Tenn. bonds at a time when her credit stood high, and none feared that she would do aught to

lower it. We now offer liberally to share half of 329
the loss. Speaking for one (and I believe that I express the sentiment of the majority) I cannot discount my just claim at better than 50 and 6 per cent. (fifty per cent. of old bonds and interest due changeable for new bonds bearing six per cent. interest), nor can I yet believe that the Legislature of Tenn. will force her creditors (who have offered so liberally) to take less.

Allow me to call your attention to a fact of which you may not be aware. John T. McKinnon speaks 330
for (if he has not already overstepped his instructions) a self-appointed syndicate. It is well-known that the syndicate own few, if any, of the bonds. They do not represent the bondholders. In fact the bondholders denounce their interference and mercenary motives. This self-constituted syndicate does not seek only to improve and promote the best interests of the South. Its sympathy would seem to be quite as much with itself. With a subscribed capital of only ten thousand dollars, it aims to in- 331
crease it by levying a regular broker's commission on the already over-burdened stockholders.

As a sovereign State your unfortunate creditors appeal to you to act as becomes your dignified position—to deal directly with bondholders, to treat as discreditable impertinence, this interference of a self-appointed syndicate, that speaks without the authority of your creditors, and whose misrepresentations and mercenary motives they generally denounce. 332

Very respectfully,

THE ESTATE OF CALVIN STEVENS,

C. AMORY STEVENS, *Trustee*

Care of

H. T. MORGAN & Co.,

35 William St., New York.

333

EXHIBIT NO. 12.—J. D. P.

NOTICE TO TENNESSEE BONDHOLDERS.

Bank of Commerce Building, Room 8.

NEW YORK, Jan. 19th, 1878.

At a meeting of the Committee of Tennessee bondholders—Present: Eugene Kelly (Chairman), Peter
334 Geddes, J. G. K. Duer, J. T. Terry and Dr. R. S. Moran, it was

Resolved—that a written copy of the resolution passed at the meeting of Tennessee Bondholders, held January 16th, 1878, be sent to Governor Porter, and that copies of the same be also printed for general distribution. It was also,

335 *Resolved*—That all holders of Tennessee bonds are requested to communicate with Mr. Peter Geddes, Bank of Commerce Building, Room 8, New York, one of said Committee.

C. AMORY STEVENS,
Secretary.

P. S.—It is necessary that all Tennessee bond holders send in their names for record as soon as possible.

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CALL OF MEETING OF TENNESSEE BONDHOLDERS.

NOTICE.

The holders of the State of Tennessee Bonds are earnestly requested to meet at the office of John B.

Manning, No. 14 Wall Street, on Wednesday, January 16th, at 12 o'clock. 337

E. D. MORGAN & CO.,
BROWN BROTHERS & CO.,
EUGENE KELLY,
GEDDES & SMITH,
JAMES G. KING'S SONS,
A. H. POMEROY,
GEORGE W. STANTON,
C. AMORY STEVENS.

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At a meeting of Bondholders of the State of Tennessee, held pursuant to the above call, the following preamble and resolutions were adopted :—

Whereas, on the 8th March, 1877, at a meeting between a committe of five members of the Tennessee Legislature (of which Col. John H. Savage was Chairman), and a Committee of Arbitration (of which Mr. George S. Coe was Chairman), to whom had been referred the question of a fair and equit- 339
able adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with the view of ascertaining and determining what a fair and equitable adjustment of it would be ; and

Whereas, at the conclusion of the conference between the Committee of the Tennessee Legislature and the Committee of Arbiters, the Committee of Arbiters made an award that the debt of the State 340
of Tennessee ought to be re-adjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest : the new bonds to bear interest at six per cent., payable semi-annually and the coupons for interest to be made receivable for all taxes and dues to the State ; and

Whereas, The Session of the Legislature expired by constitutional limitation a few days after the award of the Arbiters was rendered, and there was no time to enact a law to give it effect; and

Whereas, it was very generally understood that an extra session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the Committee of Arbitration and to enact a law to fully carry it out, the holders of a large amount of bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award, and the Governor did thereafter convene the Legislature in extra session to consider said proposition; and

Whereas, during the sitting of the legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the Committee of the Legislature and the Committee of Arbitration, and awarded by the latter Committee, and agreed to by the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and

Whereas, the bondholders of Tennessee had neither an agent or any other person to represent them before the Legislature, and fully expected that the Senators and Representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a Committee of Arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

Resolved,—That efforts made by any person who

purported to represent the bondholders of Tennessee 345
were entirely unauthorized, and that the declaration alleged to have been made at Nashville that a settlement could be effected with the bondholders upon a lower basis than that proposed by the Committee of Arbiters, of which Mr. Geo. S. Coe is Chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

Resolved—That while we deplore the attitude assumed by the Legislature, while assembled at Nash- 346
ville in December, toward the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders, or their representatives.

Resolved—That we have an abiding belief that the people of the great State of Tennesssee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them; the effect of which will be to paralyze the 347
prosperity of the State; subvert its best interests; and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

Resolved—That the people of Tennessee be urged to adopt such Legislation as will uphold the honor of the State, and evince proper regard for the high integrity which has has hitherto characterized her citizens.

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Resolved—That a Committee of five be appointed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be Chairman—to take such action as, in their judgment, may be for the interest of the bondholders, but with the under-

149 standing that no settlement less favorable than the award of the Committee of Arbitration be accepted.

(The envelope in which the above was received, and therewith exhibited is addressed,

"Gov. James D. Porter,
Nashville,
Tennessee.
"C. Amory Stevens."

150 in the handwriting of the said C. A. Stevens, and bears the postmark "New York, Feb. 1, 12 P. M.")

EXHIBIT 13.—J. D. P.

New York, *January* 25, 1878.
32 West Thirty-second street.

151 Dear Sir,—Your favor of the 19th inst. did not reach me immediately, otherwise it would have received an earlier acknowledgement.

In my communication of yesterday, I aimed to state the facts as I understand them. Should you think it proper to publish it, you are, of course, at liberty to do so. If you have any suggestion to offer that will enable me to better state the truth, and prove the sincerity of our motives, I shall be pleased to receive them, and will give them prompt and due
152 consideration.

I am not surprised that you regarded our recent meeting as you have. Indeed, but for the timely remarks of Messrs. Moran, Inman, Swann and myself at that meeting, its action would have seemed less guarded and judicious than it was. Messrs. Terry and Pomeroy may not have intended wrong, but, in my opinion, they misapprehended the situ-

ation in Tennessee when they stated, as they did at 353
our meeting on the 16th, that if the 50 and 6 per cent. proposition had not been offered to that Legislature, the 60 and 6 per cent. would have been adopted by it.

I enclose herewith accounts of the meeting as reported by the *Times*, *World*, *Tribune* and *Herald*. The Baltimore *Sun* of the 17th inst., whose reporter was present, reported in some respects more fully what was said at that meeting. The remarks of Dr. R. S. Moran and Eugene Kelly, as given in that pa- 354
per, are worthy of your notice. I think it but just to Mr. Manning to state that Dr. R. S. Moran represented him, and expressed his sentiments at the meeting.

I also enclose a written copy of the resolutions, in accordance with a resolution passed at the meeting of the Committee of Tennessee Bondholders, held January 19, 1878.

Truly yours,

C. AMORY STEVENS. 355

GOV. JAMES D. PORTER,
Nashville, Tenn.

[NOTE.—Envelope addressed in same hand as letter.

GOV'R JAS. D. PORTER,
Nashville, Tenn.]

Postmark: New York, Jan. 25, 5:30 P. M.

Copy of resolutions passed at a meeting of Ten- 356
nessee bondholders, held at the City of New York on January 16, 1878.

Whereas, On the 8th March, 1877, at a meeting between a committee of five members of the Tennessee Legislature (of which Col. John H. Savage was Chairman), and a Committee of Arbitration (of which Mr. George S. Coe was Chairman), to whom

had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with the view of ascertaining and determining what a fair and equitable adjustment of it would be; and

Whereas, At the conclusion of the conference between the Committee of the Tennessee Legislature and the Committee of Arbiters, the Committee of Arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest; the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State; and

Whereas, The session of the Legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was no time to enact a law to give it effect; and

Whereas, It was very generally understood that an extra session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt on the terms of the award of the Committee of Arbitration, and to enact a law to fully carry it out, the holders of a very large amount of the bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award, and the Governor did thereafter convene the Legislature in extra session to consider said proposition; and

Whereas, During the sitting of the Legislature, the intervention of other parties proposing and advocating before it other and different terms of settlement than those considered by the Committee of the Legislature and the Committee of Arbitration, and awarded by the latter committee, and agreed to by the bondholders, was prejudicial to the interests

of the State of Tennessee, and to her creditors, in 361
so far as it has delayed a settlement; and

Whereas, The bondholders of Tennessee had neither an agent nor any other person to represent them before the Legislature, but confided in the Legislature and fully expected that the senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accord- 362
ance therewith, unhesitatingly; therefore

Resolved, That efforts made by any persons who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville that a settlement could be effected with the bondholders upon a lower basis than that proposed by the committee of Arbiters, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders. 363

Resolved, That while we deplore the attitude assumed by the Legislature, while assembled at Nashville, in December, towards the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders or their representatives.

Resolved, That we have an abiding belief that the people of the great State of Tennessee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest up- 364
on them, the effect of which will be to paralyze the prosperity of the State, subvert its best interests and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

Resolved, That the people of Tennessee be urged to adopt such legislation as will uphold the honor

of the State, and evince proper regard for the high integrity which has hitherto characterized the citizens.

Exhibit No. 13—J. N. P.

(Extract from the *N. Y. World*, Jan'y 23d, 1878.)

BANK OF COMMERCE BUILDING,
Room 8,
NEW YORK, January 19, 1878.

At a meeting of the Committee of Tennessee Bondholders.

Present—Eugene Kelly (Chairman, Dr. R. S. Moran, J. F. Terry, Peter Geddes, and J. G. K. Duer,—it was

Resolved, That a written copy of the resolutions passed at the meeting of Tennessee Bondholders, held Jan'y 16, 1878, be sent to Governor Porter, and that copies of the same be printed for general distribution, It was also

Resolved, That all holders of Tennessee bonds be requested to communicate with Mr. Peter Geddes, 31 Nassau street, room No. 8, New York, one of said committee. It is the desire of the committee to promote co-operation among the creditors. Prompt replies from bondholders will facilitate the action of this committee.

C. AMORY STEVENS,
Secretary.

Exhibit No. 13—J. N. P.

("*N. Y. World*, Jan. 17, '78.)

TENNESSEE'S DEBT.

WHAT THE BONDHOLDERS SAY ABOUT THE LEGISLATURE'S ACTION.

A meeting of holders of bonds of the State of

Tennessee, was held yesterday afternoon, at the of- 369
fice of John B. Manning, No. 14 Wall street. The call was signed by E. D. Morgan & Co., Brown Brothers & Co., Eugene Kelly, Geddes & Smith, James G. King's Sons, A. H. Pomeroy, George W. Stanton and C. Amory Stevens.

About thirty-five gentleman were present, representing from $8,000,000 to $10,000,000 of the bonds. The total issue of the State Bonds, with accrued interest, aggregates, in round figures, $23,000,000.

Mr. Eugene Kelly was made chairman. He at 380
once called upon Mr. A. H. Pomeroy to present the resolutions, and, without opposition, the following were adopted, with a preamble which, in substance, recites the action taken by the Legislature of Tennessee, and also that of persons endeavoring to effect a settlement on a different basis than that desired by the bondholders :

Resolved, That the efforts of any person who purported to represent the bondholders of Tennessee were entirely unauthorized, and the declaration, al- 371
leged to have been made at Nashville, that a settlement could be effected with the bondholders upon a lower basis than that proposed by the Committee of Arbiters, has no foundation in fact, so far as it relates to the great body of bondholders.

Resolved, That while we deplore the attitude assumed by the Legislature, during the Special Session, towards the bondholders, we believe it resulted from the influence and unwarrantable interference of other parties than real bondholders or their rep- 372
resentatives.

Resolved, That we have an abiding belief that the great State of Tennessee will not, by the rejection of honest claims which it is abundantly able to pay, suffer a stigma long to rest upon it, the effect of which will be to paralyze the prosperity of the State, subvert its best interests and engender that demor-

alization which must ultimately result in loss to its citizens even far greater than to its creditors.

Resolved, That the people of Tennessee be urged to adopt such legislation as will uphold the honor of the State and evince proper regard for the high integrity which has hitherto characterized its citizens.

The first resolution was directed in part towards the Bond Funding Association, an account of the labors of which was given in *The World* of yesterday. It was also, it is thought, intended to hit some of those present who had, after the 60 per cent. bill failed to pass the Special Session of the Tennessee Legislature, informed the Governor, or some of the legislators, that they would take 50 per cent.

As the 60 per cent. award has fallen through, the question arose as to what should be done next. Mr. C. A. Stevens, as Trustee of the estate of Calvin Stevens, read his correspondence with the Governor of Tennessee, and others read dispatches showing what they had done. Mr. Albert Crane offered a resolution to the effect that since negotiations had been broken off bondholders should resolve to take nothing less than 100 cents on the dollar. He thought the bondholders ought to stand on their dignity. The State was able to pay, and eventually would be obliged to. Mr. Pomeroy followed, saying he wished the matter of a compromise had never been broached, and cited the case of Illinois, whose bonds were at one time worth only five or six per cent., but she now enjoys as good credit as any State. He thought it would have been the same with Tennessee if she had been let alone. Mr. Kelly replied that he did not think the cases were parallel, so far as present action was concerned. The majority of bondholders had expressed their willingness to take less than par for their bonds,

and he thought they ought not to demand more 377
than they had offered to compromise for. Mr. Peter Geddes, who represented Scotch bondholders, and who has recently visited the State to study the subject, was also opposed to any such expression, as likely to invalidate any progress that had been made. The Rev. Dr. Robert Moran, who has also studied the subject in the State, agreed with the preceding speaker, and said that with a new legislature he felt sure the proposed compromise could be effected. This counsel prevailed, and the matter 378
was settled by the adoption of a resolution offered by Mr. J. T. Terry, of E. D. Morgan & Co., which provided for the appointment of a committee of five, of which the chairman of the meeting should be chairman; this committee to take such action as its judgment may dictate. Messrs. Eugene Kelly, Peter Geddes, John T. Terry, Rev. Robert D. Moran, of North Carolina, and Mr. Duer, of James G. King's Sons, were appointed such a committee."

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(Clippings from the *New York Herald* of the 17th January, 1878, the *New York Tribune* of the same date, and the *New York Times* of the same date, all of similar import to the above, are also attached to the deposition of Jas. [illegible]. Porter, now on file in the United States Court at Memphis, Tenn.)

EXHIBIT No. 14.—J. D. P. 380

JANUARY 31st, 1878.

C. AMORY STEVENS, Esq., New York:

Dear Sir:—I have received your communications of the 24th and 25th inst., with copy of resolutions adopted at the late meeting of the creditors of Tennessee.

381 I have no comment to make upon the action of the creditors, except to reiterate my communication of the 19th inst., addressed to Mr. Manning, a copy of which was furnished to yourself.

I have the honor to be,
Very respectfully,
JAS. D. PORTER.

EXHIBIT No. 15.—J. D. P.

382

JANUARY 19th, 1878.

Mr. JNO. B. MANNING, New York:

Sir—I have read the proceedings of the meeting of the creditors of the State of Tennessee, held at your offices on the 16th inst., when it was resolved that no settlement of the debt would be accepted on a lower basis than sixty cents.

In a special message to the Legislature of Tennessee, delivered on the 12th of December last, I
383 recommended the compromise of the public debt upon a basis of fifty per cent. This was done upon the authority of a number of the large creditors of the State communicated to me by telegraph. Among others, a telegram was received from Mr. C. Amory Stevens, the Trustee of the estate of one of the largest creditors, in which he proposed "to take fifty cents on the dollar," and urged me to submit the proposition to the Legislature, and gave expression to the opinion that his dispatch "repre-
384 sent the sentiment of most of the investment holders," and from yourself I received the following telegram:

"NEW YORK, December 10th, 1877.

"To His Excellency, JAS. D. PORTER,
"Governor of Tennessee:

"On behalf of clients, I offer to accept for bonds and

"interest at fifty per cent. new six per cent. consols 385
"with first coupon payable July, 1878, and if not
"then, January, 1879, I beg you to lay this before
"the Legislature.

"JOHN B. MANNING."

This with others of similar import was submitted to the Legislature in good faith and in the honest belief, founded upon assurance made by the creditors whose correspondence was communicated to the Legislature that if this offer was adopted by the 386
State that it would be generally acceptable to the creditors. At the meeting referred to, no allusion was made to your agency in the business, and your own silence—coupled with the action of the creditors at the meeting before mentioned, is a reflection upon my own character and conduct, and puts me in the attitude of trifling with a great question, by recommending a compromise without the assent of the creditors, after assuming that they had a right to a hearing. 387

If this compromise had been adopted by the Legislature the taxpayers of the State would, in my opinion, have ratified it and accepted it as a final adjustment of the question. As it is, public opinion, as represented by those who favored it, has settled upon it as the basis of a future settlement. For this, yourself and those who acted with you are responsible, and you cannot complain if there is no reaction in public sentiment responsive to the resolutions adopted at the late meeting of the creditors. 388
If this meeting had been held in December last its moral influence would have been of incalculable benefit in the assurance that it would have carried to the minds of members of the Legislature that they were dealing directly with the creditors of the State. Then they would not have been confronted at every legislative step and misled by a lot of spec-

389 ulators and adventurers whose aspiration was a bear movement, out of which it is believed they made many thousands of dollars.

I will send a copy of this communication to Mr. Stevens.

I have the honor to be,
Very respectfully,
JAS. D. PORTER.

390

EXHIBIT 16.—J. D. P.

NEW YORK, January 24, 1878.

We, the undersigned, who sent the dispatches alluded to in the foregoing letter of Mr. Stevens, heartily concur in the sentiments expressed by him.

INMAN, SWANN & Co.
JNO. B. MANNING.

391

EXHIBIT 17.—J. D. P.

Office of JOHN B. MANNING.

Member of the New York Stock and Gold Exchange. } 14 Wall St., New York, *Nov.* 1, 1877.

His Excellency, JAS. D. PORTER,
Governor of Tennessee, Nashville, Tenn.:

Sir,—I have taken the liberty of telegraphing you
392 to-night as follows: "Am authorized on behalf of large number of Tennessee bondholders to submit proposition of compromise by accepting sixty cents on dollar for bonds and past due coupons, payable in new six per cent. consols, and ask you to convene Legislature to carry out compromise," which I now beg to confirm.

From a letter received from your City I inferred

that a proposition from the bondholders would be 393
acceptable, and that the Legislature would be called together to consider it. There are a great many holders of bonds who feel that Tennessee has the ability to pay her debt in full. Still, they are willing to accept a compromise rather than let the matter remain unsettled longer.

Trusting the above will be favorably received, I have the honor to be,

Yours respectfully,

JNO. B. MANNING. 394

EXHIBIT 18.

Office of JOHN B. MANNING,

Member of the New York Stock & Gold Exchange.

14 WALL ST., NEW YORK,
Nov. 8th, 1877.

His Excellency, JAMES D. PORTER, 395

Governor of Tennessee, Nashville, Tenn.:

SIR:—I beg to acknowledge your favor of 3d inst. At the time I telegraphed you I was unable to say how many thousand bonds of Tennessee I represented. I suppose I have consulted with some $2,000,000 worth, and they seem satisfied to accept a compromise of 60%, while they would at the same time feel grateful for a better settlement. People have a delicacy in stating the amount of Tennessee 396
bonds they hold, fearing it might injure their credit, but this fear, I hope and trust, will be done away with, now that Tennessee is coming forward to settle her debts to the best of her ability. I understand *you* are in favor of paying dollar for dollar, and I wish all your citizens were of the same mind.

By this registered letter I send you the following

397 Tennessee coupons which were left in my hands by my clients for collection, and which I was unable to get in when the State was paying. I therefore pray that you forward me a check for same, viz.:

1 @ 25, 1,584, July, 1875.....	$ 25 00
11 @ 30, July, 1875, 5,933, 4,428, N. S., 2,892, N. 8,763, 10,050, 6,989, 10,123, 8,761, 554, 2,985, 567.....	330 00
	$355 00

398

Very resp'y yours,
JNO. B. MANNING,
per M. C.

EXHIBIT NO. 19.—J. D. P.

"STATE OF TENNESSEE.

399 We, James D. Porter, Governor, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify—pursuant to section 6 of an act entitled 'An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee,' passed February 25, 1869, that Adolphe Schreiber, James Fentress and Lewis V. F. Randolph (trustees under a certain mortgage made the eighth day of November, 1877, between the Chicago, St. Louis and New Orleans Railroad Company, of
400 the first part; the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Mississippi Railroad Company, of the third part, and the said Trustees of the fourth part), as Trustees for the purchasers and holders of the bonds to be issued under said mortgage, numbered from number one to number one thousand one hundred and ninety-nine, inclusive, have paid in and deliv-

ered up bonds and coupons of the State of Tennes- 401
see as authorized by the act aforesaid equal in amount to the indebtedness heretofore created by the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, and which is a first lien on the railroad and property heretofore known as the Mississippi Central Railroad, lying in the State of Tennessee, and has become a debt of, and a first lien upon the property of the Chicago, St. Louis and New Orleans Railroad Company, its successor, in the State of 402
Tennessee; that such payment was made by and with the written consent of the Board of Directors of the Central Mississippi Railroad Company, and of the Chicago, St. Louis and New Orleans Railroad Company, as allowed by the Statutes of Tennessee, and that the said Trustees, for and in behalf of the holders of said bonds to be issued under said mortgage to provide and be substituted for the debt of the State of Tennessee so paid, are substituted and entitled to all the liens against said property for the 403
payment of said debt that the State of Tennessee had or has by law.

And we do hereby, as provided and authorized in the Act of February 25, 1869, and acts amendatory thereof, in the name of the State of Tennessee and in her behalf and for the considerations above named, assign and transfer to the said Adolphe Schreiber, James Fentress and Lewis V. F. Randolph, trustees as aforesaid, all the debt and lien of the State of Tennessee on the railroad 404
and property heretofore owned in said State by the Mississippi Central and Tennessee Railroad Company, and on all the railroad property in said State heretofore known as the Mississippi Central Railroad, now known as the Chicago, St. Louis and New Orleans Railroad, which said State has or had on the same by reason of the internal improvement

laws of said State, and the fact that said State had granted aid to said railroads under the statutes thereof, with all the rights, privileges and powers which said State has or had for enforcing said lien; the object being to substitute the said trustees for the State, and to place them in the same position and with the same rights which the State of Tennessee had previous to and before the said payment and delivery of State bonds, with full power to enforce the same in any and every manner in which the said State may or might.

This the 28th of November, A. D. 1877.

In witness whereof, I, James D. Porter, Governor of the State of Tennessee, have hereto set my hand and caused the great seal of the State of Tennessee to be hereunto affixed, this 28th of November, 1877.

(Sd.) JAS. D. PORTER,
Governor.

In witness whereof, I, Chas. N. Gibbs, Secretary of State, have hereto set my hand and the great seal of the State of Tennessee, this November 28, 1877.

(Sd.) CHAS. N. GIBBS,
Sec. State.

EXHIBIT No. 20.—J. D. P. 409

NEW YORK, Jan. 24, 1878.
32 West 32d st.

To His Excellency Gov. JAS. D. PORTER,

Nashville, Tenn.:

Sir—I thank you for your outspoken views, as expressed in your favor of the 19th inst. It enables me to correct a misapprehension which you manifestly entertain, and to place my associate and self 410 correctly before you and the public.

In behalf of myself and others who entertained similar views, I offered and urged the 50 and 6% settlement; not that I thought it just to ourselves, or honorable to the State of Tennessee. Indeed, I believed then, as I do now, that anything less than 60 and 6%, the arbitration award, would be neither just nor honorable.

I judged, however, from the reported proceedings of the Legislature that the passage of the sixty and 411 six bill was then highly improbable. At the same time I had what I then deemed good reasons to believe that if the creditors would only modify their proposition by substituting 50 for 60 in the bill, the Legislature would very gladly accept it.

It was under this impression that a few of us, consulting together, thought it expedient under the circumstances, to advise your Excellency that such a modification would, in our opinion, be accepted by the creditors. This modification was proposed, 412 however, without any authority from the great majority of the bondholders, but it was thought by those of us who made it, that an adjustment, even on the basis of 50 and 6% would be accepted by most of the investment holders, rather than that the Legislature should adjourn without final settlement of the debt. I believe even now, if the Legisla-

413 ture had promptly accepted our proposition, the majority of the bondholders would have concurred in it. But, while your Excellency fully appreciated our honest efforts, the Legislature did not respond to them in the spirit in which they were made. A certain few wisely and eloquently endeavored to uphold the honor of the State by doing justice to her creditors. The majority, however, seemed to regard our increased liberality very much in the light of gratitude as de-
414 fined by a French philosopher—"a lively appreciation of favors to come." They pressed for even further concessions. They treated "the pesky bondholder" as a public enemy, an outside barbarian, whose rights were unworthy of recognition. They forgot, however, the solemn promises which the State had made when she sought the capital of her creditors to carry on those internal improvements which have enhanced the value of property in Tennessee far beyond the amount borrowed.

415 Under such circumstances it would certainly seem quite natural and right that the great majority of bondholders who never offered settlement at less than 60 and 6% should adhere to the Arbitration Award, even more firmly than before, while those of us who did offer even further concessions to that Legislature, remembering the spirit in which it was received, are determined never again to renew it. There is now prevailing one unanimous sentiment among the bondholders—60 and 6% or repudiation
416 is the question for Tennessee to decide.

As your Excellency has very properly suggested, an earlier public expression on the part of the bondholders themselves would have been of incalculable benefit. But we were deceived. The same "Funding Association" that befogged the Tennessee Legislature also befogged us. As soon as we discovered how misrepresented we had been we gave public ex-

pression to our views. And that the public may 417
more fully know who are the *bona fide* creditors seeking their honest dues, and who are of the Syndicate Ring seeking only to prey on the misfortunes of both creditor and debtor, it is proposed, at an early day, to even more clearly expose the inner workings of the "Funding Association, Limited." By its acts it has proved itself one of the most mercenary and unprincipled conspiracies that has ever disgraced the annals of a people.

I presume that your Excellency's allusion to "a 418
bear movement, out of which many thousands were made," applies to the Syndicate Ring. If intended as applicable to others, allow me to assure you that it is a mistake. I am well aware that a stranger, whose name we have been unable te ascertain, asserted, at our meeting of the 16th inst., that he so regarded the dispatches, on the strength of which you reconvened the Legislature. There may have been seeming cause for suspicion on the part of those who bought the bonds at 47 and sold them at 419
34; but it was an unfounded suspicion. A more false statement could not have been uttered, if it was intended for my associates and self, whose dispatches you submitted to the Legislature.

Allow me to add, that whatever difference of opinion may exist in other respects, I think that I may safely say that there is one point on which there is unanimity of opinion. The creditors of Tennessee fully appreciate the earnest and sincere efforts of your Excellency in support of their rights, 420
while Tennessee herself must ever gratefully remember you as the devoted champion of her honor and integrity.

With assurances of respect and esteem, I remain,

Very respectfully,

C. Amory Stevens.

Deposition of H. L. Claiborne. 1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the RAILROAD COMPANY, 2

versus

THE RAILROAD COMPANY.

Deposition of H. L. CLAIBORNE, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present, W. Y. C. HUMES, for defendants.

H. L. CLAIBORNE, being first duly sworn, deposed as follows: 4

I will be sixty-one years old in a few days; I have resided in Nashville, Tennessee, nearly all of sixty years, and reside there now; I was General Book-

5 keeper, acting also for several years as Assistant Cashier of the Bank of Tennessee, beginning in 1849, and continuing until 1853, when I resigned, and was afterwards (I think in 1858) elected again to the same position in the bank, and held the position until the bank was taken possession of by the Government (in April or May, 1865), except for the latter part of 1853 and the years 1854–5–6 and 7, and the early part of 1858 I held that position in the bank; the Bank of Tennessee was the fiscal
6 agent of the State of Tennessee from the passage of the General Internal Improvement Act, in 1851–2, of the General Assembly of the State of Tennessee; the funds of the State were deposited in the Bank of Tennessee and its branches, to the credit of the Treasurer of the State; the State had no other treasury to my knowledge; I do not think that the State Treasurer or other State officials had any *proper safe* or other means provided for the safe keeping of moneys of the State; I do not know of
7 the Treasurer of the State keeping funds in any other bank except the Bank of Tennessee, and branches of the same; it was the duty of tax collectors or any other persons having money, the revenue of the State, to pay the same to the Treasurer of the State, or into the Bank of Tennessee and branches designated by the State Treasurer, and to his credit; I know this fact as to the Bank of Tennessee and its branches, I cannot remember distinctly, after so
8 many years, but think where there was no branch of the Bank of Tennessee, the Treasurer might have directed tax collectors to pay into other banks most convenient to the official thus paying moneys; when this was done, I think the Treasurer generally, if not always, withdrew that deposit by depositing his checks or drafts on such outside banks with the Bank of Tennessee at Nashville, and the bank

would collect and credit the Treasurer of the State 9
with the amount so collected. All disbursements
from the State Treasury were made as follows:
The Comptroller of the State would issue his paya-
ble warrant on the Treasurer of the State, the Treas-
urer would then issue his check on the Bank of Ten-
nessee, which bank kept an account with him, cred-
iting him with all moneys received, and charging
him with all moneys paid out on his check. As to
the payment of interest of the railroad companies,
under the Internal Improvement Act of the State 10
of Tennessee, 1851-2, all railroad companies were
required to pay the interest on the amount of bonds
issued to them, into the Bank of Tennessee, fifteen
days before the coupons of the State for interest, at-
tached to the bonds, and due semi-annually, fell due.
The Bank of Tennessee was notified by the State
officials of the amount of interest due by each rail-
road Company, so that when the companies came to
settle their interest, the bank officials would know
what amount to receive from each railroad company. 11
The interest payments received semi-annually by
the Bank of Tennessee, from the several railroad
companies during my official connection with the
bank, were placed to the credit of an account called
"Railroad Companies for Interest," and the amount
was afterwards charged off and went to the credit
of the Treasurer of the State, subject to his checks,
like all other moneys of the State, from whatever
source derived; I have heretofore examined the
books of the Bank of Tennessee, and find that the 12
interest so paid in by the railroad companies was
sometimes during the term of office of another gen-
eral bookkeeper of the Bank of Tennessee (Mr. Geo.
W. Seay) serving as such when I was not employed
at the bank, placed to credit of the railroad com-
pany paying, but no account was kept, nor attempted
to be kept with or in respect of the holders of the

coupons of the State bonds issued to the respective railroad companies paying their interest to the State semi-annually, and no attemptwas ever made to my knowledge,and we had no data or information which would enable the bank to apply the interest so paid by the respective companies to the particular coupons of the bonds issued to the respective Companies making the payments. Two accounts of the East Tennessee and Virginia Railroad Company for interest are shown me, the accounts are correct, in my handwriting, and I make them part of this deposition (marked A and B, respectively). There are receipts and bills rendered by the Bank to said Railroad Company at their respective dates, during my connection with the Bank as general bookkeeper. They are in my handwriting, and show the interest payments were made as so much interest owing by said Railroad Company to the State. The bills were rendered on that basis and receipted for accordingly. After the respective Railroad Companies on the 15th of each June and December had so paid the amount of interest so due to the State of Tennessee by deposit in the Bank of Tennessee, the Railroad Companies had no further dealing, control or account of the interest so paid, but left the State to pay its own interest through the Bank, as its fiscal agent, to the creditors of the State. From 1849 up to the commencement of the war the State of Tennessee invariably paid promptly, as they fell due, all her obligations, and had ample and readily attainable resources to do so. She never did, before the war, go to protest upon or permit to be dishonored or to remain unpaid at maturity any of her obligations, and no one thought of or contemplated the possibility of such a contingency happening so far as I know. The coupons were payable in the City of New York; the correspondent of the Bank of Tennessee in that city

was authorized by the bank to pay all coupons of 17
bonds of the State of Tennessee. The Merchants
Bank of New York was that correspondent, and
when they rendered accounts to Bank of Tennessee
would send coupons paid as vouchers of such
payment; the coupons were handed over by the
Bank of Tennessee to the State Treasurer, who
would issue his checks therefor, and his pass-book
with the bank was regularly balanced, all his checks
being handed to him when the pass-book was so
balanced, the checks being cancelled by the bank. 18
The railroad companies were the debtors to the
State for State bonds loaned them, and were re-
quired, as before stated, to pay the interest due by
them fifteen days before the coupons were payable
in New York by the State of Tennessee semi-an-
nually. As I have stated another bookkeeper of
the Bank of Tennessee (Mr. Geo. W. Seay), kept
separate accounts with the railroad companies for
interest paid by them to the State, but this course
of his amounted to the same thing, the accounts 19
were not kept so as to show the particular bonds
issued to any railroad company, or the interest on
any such particular bonds. The officials of the
Bank of Tennessee and the correspondent
Bank at New York did not and could not know the
coupons of bonds issued to any particular railroad
company; the coupons were paid indiscriminately, all
being paid as they were presented, and all being re-
turned to the treasurer of the State as received from
the bank which paid them. The Bank of Tennessee, 20
so far as I know, and I think I would have known
it, never knew the number of the bonds issued to
each particular railroad company; nor did the Bank
of Tennessee in any way act as the agent of any of
the railroad companies in paying interest for them,
on bonds issued to them, but the bank simply re-
ceived the amount of interest from the railroads as

provided by law, as before stated, fifteen days before the interest coupons fell due from the State. I know of no account kept by the Bank of Tennessee with the railroad companies except as before stated, and the bank could only officially know what amount of interest was due from any of the railroad companies by the information furnished by the State officials. The interest payments received by the bank from the various railroad companies were placed to the credit of an account called "Railroad Companies for Interest," or to the credit of the company paying, simply as a matter of convenient reference; it amounted to the same, however, as if directly carried to the credit of the State Treasurer, as all of these accounts had of necessity to appear in said Treasurer's account on the books of the bank of Tennessee when his account was balanced. The money paid was the State's money, as the State was liable for the coupons of all bonds issued by the State, whether to railroad companies or for any other purposes; as I have already stated, the bank paid as the fiscal agent of the State, and on its behalf, the interest on all the State bonds; the amount so paid was charged to the State (in the Treasurer's account) as so much paid for the account of the State. The State got credit on the books of the bank of Tennessee for all moneys paid into the bank, either by railroad companies or by other parties, and payments were made by the bank of Tennessee or by the correspondent of the bank, and all such payments were charged to the Treasurer of the State, and never charged to any of the railroad companies.

And further saith not.

H. L. CLAIBORNE.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
Special Examiner.

EXHIBIT "A."

To H. L. Claiborne's Deposition.

EAST TENNESSEE & VIRGINIA R. R. Co.

WITH STATE OF TENNESSEE Dr.,

1859.

June 15—Interest on State Bonds due

Et prol'd..... 48,060

CR.,

June 11,	Currency	$2,452.90	
	Less ¼ of Ex, 6.13..		2,446.77
13,	New York exchange		22,645.00
	Currency $55 less ¼% Ex. $14.....		54.86
14	New York exchange		14,943.96
	Currency $3,945 less ¼% Ex.....	9.56	3,935.14
15	New York exchange		4031.00
	Specie for Balance...		3.27
			48060.00

H. L. CLAIBORNE.

Nashville, June 15, 1857.

G. B. K. Bank of Tennessee.

Endorsed.

"Bank of Tennessee Nashville,"

"$48,060."

(Other part of Exhibit "A." on next page.)

L. W. H.
Sp'l Ex'r.

29 BANK OF TENNESSEE.

NASHVILLE, July 7th, 1859.

SAM'L B. CUNNINGHAM, ESQ., Prest.,
Jonesborough, T.,

Dear Sir:—I have yours of the 4th inst., is received. Below I give a full statement of the settlement E. T. & Va. R. R. interest, which you will find to be correct.

30	June 11,	Bank notes per express.....		$2,452 90
	" 13,	"	$55.00	
	"	958 Phenix bank, N. Y.	12,645.00	
		959 " "	10,000.00	
				22,700.00
	" 14,	881 Bank of Republic, N. Y.....	14,443.96	
	"	6,330 Merchant's bank N. Y. N. Y. ck....	500	
	"	McMahanlas to Bank		
31		of T.....	2,500	
	"	Bank Notes.....	1,445	
				18,888.96
	" 15,	New York Exchange of Porterfield.....		4,031.00
				48,072.86
	You owed interest.....			48,060.00
32	Balance Exchange on Currency paid by you.....			12.86

So you see the bank was correct in the settlement.

Very Respectfully yours,
H. L. CLAIBORNE,
for Cashier.

Endorsed:

"Bank of Tenn., Nashville."
"For Interest July 1, 1859."
"Entered June 30, 1859."

EXHIBIT "B." 33

"To H. L. Claiborne's Deposition."

THE EAST TENNESSEE & VIRGINIA R. R. Co.,
TO STATE OF TENNESSEE, DR.

Interest due 1st July, on 1,602 State Bonds	$48,060.00
¼ o/o Exchange on Currency	16.80
	$48,076.80

34

CREDITS:

American Exchange Bank	$530.95
Bank of the Republic	6,000.00
Phenix Bank	25,000.00
Bank of New York	10,000.00
Bill on N. Y., $5,000 less discount $75	4,925.00
Leaving for balance	1,620.85
	$48,076.80

35

Nashville, 15th June, 1860.

H. L. CLAIBORNE, G. B. K.,
Bank of Tennessee.

Endorsed:

"Rec't."
"Bank of Tenn."
"for Int. July 1, 1865."

36

Deposition of G. W. Seay.

1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the RAILROAD COMPANY,

2

versus

THE RAILROAD COMPANY.

Deposition of G. W. SEAY, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for defendants.*

G. W. SEAY, being first duly sworn, deposed as follows: 4

My name is George Whorton Seay; I was fifty-two (52) years old my last birth day; I have lived in and near Nashville since May, 1866—from boy-

5 hood; I lived in Nashville with but one or two short intervals up to October, 1858, at which time I moved to Columbia, Tennessee; from January, 1854, as I now recollect, up to October, 1858, I was general bookkeeper of the Bank of Tennessee, at Nashville, succeeding H. L. Claiborne in 1854, and succeeded by him in October, 1858; during that period the Bank of Tennessee was the sole fiscal agent of the State of Tennessee, and all the funds of the State were or ought to have been deposited
6 in said Bank. If the State officials had any safe or other means to keep their money secure; it was, I presume, merely a temporary place preparatory to making regular deposits in the bank; if a tax collector had money deposited in a branch bank, I suppose he would have deposited it in such branch bank temporarily at his own credit, awaiting the time when he would pay it over to the State Treasurer, accompanied by a receiving warrant from the Comptroller, but of this I have no
7 knowledge as payments were made to the Treasurer on a receiving warrant from the Comptroller, the treasurer taking up the Comptroller's paying warrant and issuing therefor to the parties presenting same, his checks on the Bank of Tennessee; I have examined some (possibly all) the accounts kept with the railroad companies of the State which had received the State bonds; I find that I adopted a different plan, but with the same view as my predecessor. He kept his receipts from railroads as
8 "Railroad Companies for Interest on State Bonds," and I kept the accounts with the different railroads separately. My reason for this change was on account of the frequent partial payments made by those companies, and the difficulty in stating the unpaid balances due from those companies if the account had been kept up as it had been commenced by my predecessor under the heading of "Railroad

Companies for Interest," &c. The moneys thus paid, whether to credit of the account headed "Railroad Companies for Interest," &c., or to credit of separate railroads, as kept by myself, was merely kept temporarily so until the amounts due by each railroad had been fully provided, and then passed to credit of the Treasurer of Tennessee. The keeping of the accounts by myself separately for the different railroads was not provided for the payment of any specific bonds, but for the payment of so much interest due the State by the railroad companies. The Bank of Tennessee did not keep any account of the separate and particular bonds issued any railroad company, and as an officer of the bank I did not know and was never furnished with any list of such loans made by the State to the railroad companies, but simply furnished with a list of the several amounts of interest due the State by the companies who had received the loan of bonds from the State. The bank acted in no other way towards such railroad companies than as the depositary of such companies for credit of the Treasurer of the State in the manner before stated. As fiscal agent of the State the Bank of Tennessee paid, or caused to be paid by its correspondent in New York, all the coupons from the State bonds, for whatever purpose issued, and never charged the payment of a single coupon to any railroad whatever. The interest so paid was charged to the Treasurer of the State directly by the Bank of Tennessee.

And further saith not.

G. W. SEAY.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
Special Examiner.